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THE WRITINGS

OF

JAMES MADISON

VOLUME IV.

1787

Of this Letter-press Edition

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October, 1903

THE WRITINGS

OF

JAMES MADISON

COMPRISING HIS PUBLIC PAPERS AND HIS PRIVATE CORRESPONDENCE, INCLUDING NUMEROUS LETTERS AND DOCUMENTS NOW FOR THE FIRST TIME PRINTED

EDITED BY

GAILLARD HUNT

VOLUME IV.

1787

THE JOURNAL OF THE CONSTITUTIONAL CONVENTION

II.

G. P. PUTNAM'S SONS

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CONTENTS OF VOLUME IV.

	PAGE
Note	vii
Chronology	ix
Journal of the Constitutional Convention	1
Index	507

FACSIMILE.

	FACING PAGE
First Page of the Constitution, reduced	505

NOTE.

In photographing the first page of the Journal (Vol. III., facing p. 2) it was found to be impossible to reproduce the note, which is on a separate slip of paper. It contained, as the text (p. 1) indicates, a list of the members of the convention.

In the note on page 25 (Vol. III.), the sentence stating Chief-Justice Nott has informed the editor that "*some*" of Pinckney's notes are extant is a misprint, and for "*some*" the word *none* should be substituted.

Pierce's sketches of the members of the convention omit John Francis Mercer of Maryland and William Churchill Houstoun of New Jersey. The editor has inadvertently omitted the brief sketch of Thomas Fitzsimons of Pennsylvania. It should have been a note on page 116 (Vol. IV.), and is: "Mr. Fitzsimons is a Merchant of considerable talents, and speaks very well I am told, in the Legislature of Pennsylvania. He is about 40 years old." (*Am. Hist. Rev.*, iii., 328.)

The student should consult Professor John Franklin Jameson's paper on "Studies in the History of the Federal Convention of 1787," to appear in the

report of the American Historical Association for 1903, for an exhaustive discussion and identification of contemporaneous writings, besides Madison's, throwing light on the proceedings of the constitutional convention.

G. H.

CHRONOLOGY OF JAMES MADISON.

1787.

1787.

July 19. Advocates election of the Executive by the people.

July 20. Speaks in favor of making the Executive impeachable.

July 21. Seconds proposition to include the Judiciary with the Executive in power to revise laws.

Moves that judges be appointed by the Executive with concurrence of two-thirds of Senate.

July 25. Shows the difficulty of devising satisfactory mode of selecting Executive.

August 7. Advocates liberal suffrage.

August 8. Moves that basis of representation in House of Representatives be one to not more than 40,000 inhabitants.

Opposes proposition that money bills originate only in House of Representatives.

August 9. Opposes incorporation in constitution of provision against persons of foreign birth holding office.

August 10. Moves that legislature have power to compel attendance of members.

August 11. Moves that Congress publish its journals, except such parts of Senate proceedings as may be ordered kept secret.

Advocates a centrally located capital.

August 13. Seconds motion in favor of liberal treatment of foreigners.

Speaks in favor of participation of Senate in making appropriations.

August 15. Moves that all bills be passed upon by the Executive and Judiciary before becoming laws.

August 16. Advocates national power to tax exports.

August 17. Moves that legislature have power to declare war.

August 18. Submits propositions for national power over public lands, to form governments for new States, over Indian affairs, over seat of government, to grant charters of incorporation, copyrights, to establish a university, grant patents, acquire forts, magazines, etc.

Speaks in favor of national control of militia.

August 22. Appointed on committee to consider navigation acts.

Moves that States have power to appoint militia officers under rank of general officers.

Moves to commit question of negative of State laws.

Moves to include the Executive in treaty-making power.

August 25. Declares it is wrong to admit the idea of property in men in constitution.

August 27. Suggests that in case of death of President his council may act.

Moves form of oath for President.

Moves that judges' salaries be fixed.

Expresses doubt whether Judiciary should have power over cases arising under constitution.

August 28. Moves that States be forbidden to lay embargoes, export and import duties.

August 29. Speaks in favor of navigation acts.

August 31. Moves that ratification of constitution be by a majority of States and people.

Advocates ratification by State conventions.

Appointed on committee to consider parts of constitution and propositions not yet acted upon.

Sept. 3. Thinks eventual election of President by legislature should be made difficult.

Sept. 7. Moves that Senate have power to make treaties of peace without President.

Sept. 8. Moves that quorum of Senate be two-thirds of all the members.

Seconds motion to increase representation.

Sept. 14. Suggests that legislature should have power to grant charters of incorporation.

Sept. 17. Signs constitution.

THE WRITINGS OF

JAMES MADISON.

JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1787.—*Continued.*

THURSDAY JULY 19. IN CONVENTION.

On reconsideration of the vote rendering the Executive re-eligible a 2^{d} time, Mr Martin moved to re-instate the words, "to be ineligible a 2^{d} time."

Mr Governeur Morris. It is necessary to take into one view all that relates to the establishment of the Executive; on the due formation of which must depend the efficacy & utility of the Union among the present and future States. It has been a maxim in Political Science that Republican Government is not adapted to a large extent of Country, because the energy of the Executive Magistracy can not reach the extreme parts of it. Our Country is an extensive one. We must either then renounce the blessings of the Union, or provide an Executive with sufficient vigor to pervade every part of it. This subject was of so much importance that he hoped to be indulged in an extensive view of it. One great object

of the Executive is to controul the Legislature. The Legislature will continually seek to aggrandize & perpetuate themselves; and will seize those critical moments produced by war, invasion or convulsion for that purpose. It is necessary then that the Executive Magistrate should be the guardian of the people, even of the lower classes, agst Legislative tyranny, against the Great & the wealthy who in the course of things will necessarily compose the Legislative body. Wealth tends to corrupt the mind to nourish its love of power, and to stimulate it to oppression. History proves this to be the spirit of the opulent. The check provided in the 2^{d} branch was not meant as a check on Legislative usurpations of power, but on the abuse of lawful powers, on the propensity in the 1st branch to legislate too much to run into projects of paper money & similar expedients. It is no check on Legislative tyranny. On the contrary it may favor it, and if the 1st branch can be seduced may find the means of success. The Executive therefore ought to be so constituted as to be the great protector of the Mass of the people.— It is the duty of the Executive to appoint the officers & to command the forces of the Republic: to appoint 1. ministerial officers for the administration of public affairs. 2. officers for the dispensation of Justice. Who will be the best Judges whether these appointments be well made? The people at large, who will know, will see, will feel the effects of them. Again who can judge so well of the discharge of military duties for the protection & security of the

people, as the people themselves who are to be protected & secured? He finds too that the Executive is not to be re-eligible. What effect will this have? 1. it will destroy the great incitement to merit public esteem by taking away the hope of being rewarded with a reappointment. It may give a dangerous turn to one of the strongest passions in the human breast. The love of fame is the great spring to noble & illustrious actions. Shut the Civil road to Glory & he may be compelled to seek it by the sword. 2. It will tempt him to make the most of the short space of time allotted him, to accumulate wealth and provide for his friends. 3. It will produce violations of the very constitution it is meant to secure. In moments of pressing danger the tried abilities and established character of a favorite magistrate will prevail over respect for the forms of the Constitution. The Executive is also to be impeachable. This is a dangerous part of the plan. It will hold him in such dependence that he will be no check on the Legislature, will not be a firm guardian of the people and of the public interest. He will be the tool of a faction, of some leading demagogue in the Legislature. These then are the faults of the Executive establishment as now proposed. Can no better establishm[t] be devised? If he is to be the Guardian of the people let him be appointed by the people? If he is to be a check on the Legislature let him not be impeachable. Let him be of short duration, that he may with propriety be re-eligible. It has been said that the candidates for

this office will not be known to the people. If they be known to the Legislature, they must have such a notoriety and eminence of Character, that they cannot possibly be unknown to the people at large. It cannot be possible that a man shall have sufficiently distinguished himself to merit this high trust without having his character proclaimed by fame throughout the Empire. As to the danger from an Unimpeachable magistrate he could not regard it as formidable. There must be certain great Officers of State; a minister of finance, of war, of foreign affairs &c. These he presumes will exercise their functions in subordination to the Executive, and will be amenable by impeachment to the Public Justice. Without these ministers the Executive can do nothing of consequence. He suggested a biennial election of the Executive at the time of electing the 1st branch, and the Executive to hold over, so as to prevent any interregnum in the administration. An election by the people at large throughout so great an extent of country could not be influenced by those little combinations and those momentary lies, which often decide popular elections within a narrow sphere. It will probably, be objected that the election will be influenced by the members of the Legislature; particularly of the 1st branch, and that it will be nearly the same thing with an election by the Legislature itself. It could not be denied that such an influence would exist. But it might be answered that as the Legislature or the candidates for it would be divided, the enmity of one part would counteract

the friendship of another; that if the administration of the Executive were good, it would be unpopular to oppose his re-election, if bad it ought to be opposed & a reappointm^{t} prevented; and lastly that in every view this indirect dependence on the favor of the Legislature could not be so mischievous as a direct dependence for his appointment. He saw no alternative for making the Executive independent of the Legislature but either to give him his office for life, or make him eligible by the people. Again, it might be objected that two years would be too short a duration. But he believes that as long as he should behave himself well, he would be continued in his place. The extent of the Country would secure his re-election agst the factions & discontents of particular States. It deserved consideration also that such an ingredient in the plan would render it extremely palatable to the people. These were the general ideas which occurred to him on the subject, and which led him to wish & move that the whole constitution of the Executive might undergo reconsideration.

Mr Randolph urged the motion of Mr L. Martin for restoring the words making the Executive ineligible a 2^{d} time. If he ought to be independent, he should not be left under a temptation to court a re-appointment. If he should be re-appointable by the Legislature, he will be no check on it. His revisionary power will be of no avail. He had always thought & contended as he still did that the danger apprehended by the little States was chimerical; but those who thought otherwise ought to be peculiarly

anxious for the motion. [redacted] be appointed, as has been deter[redacted]re. It he will probably be appoi[redacted]nstance of both houses, or be no[redacted] stab- appointed by the 2d bra[redacted] the two de- large States will preponde[redacted] same influence for his re[redacted] make his revisionary powe[redacted] He tions of his administratio[redacted] appoint- of the large States. Be[redacted] was reason to apprehend that [redacted] be as eligible, a false complai[redacted] an might lead them to conti[redacted] Character. in preference to a fit one. [redacted] for constitutional bar to re-ap[redacted] him an constitutional endeavours [redacted] There was may be answered that his [redacted] attending effect unless the people be [redacted] right of as to render all precaution[redacted] Northern be added that this argu[redacted] could have more powerful & dangero[redacted] of the which have been used, adm[redacted] this for stronger fetters on his a[redacted] liable to election by the Legislature[redacted] elected a second time would [redacted] by people than the plan sugg[redacted] re-

Mr King did not like the [redacted] there was great force in the [redacted] people that he who has proved him[redacted] de- ought not to be excluded [redacted] ap- holding it. He would the[redacted]

reasonable plan that could be substituted. He was much disposed to think that in such cases the people at large would chuse wisely. There was indeed some difficulty arising from the improbability of a general concurrence of the people in favor of any one man. On the whole he was of opinion that an appointment by electors chosen by the people for the purpose, would be liable to fewest objections.

Mr Patterson's ideas nearly coincided he said with those of Mr King. He proposed that the Executive should be appointed by Electors to be chosen by the States in a ratio that would allow one elector to the smallest and three to the largest States.

Mr Wilson. It seems to be the unanimous sense that the Executive should not be appointed by the Legislature, unless he be rendered in-eligible a 2^d^ time: he perceived with pleasure that the idea was gaining ground, of an election mediately or immediately by the people.

Mr Madison. If it be a fundamental principle of free Gov^t^ that the Legislative, Executive & Judiciary powers should be *separately* exercised, it is equally so that they be *independently* exercised. There is the same & perhaps greater reason why the Executive sh^d^ be independent of the Legislature, than why the Judiciary should. A coalition of the two former powers would be more immediately & certainly dangerous to public liberty. It is essential then that the appointment of the Executive should either be drawn from some source, or held by some tenure that will give him a free agency with regard to the

Legislature. This could not be if he was to be appointable from time to time by the Legislature. It was not clear that an appointment in the 1st instance even with an ineligibility afterwards would not establish an improper connection between the two departments. Certain it was that the appointment would be attended with intrigues and contentions that ought not to be unnecessarily admitted. He was disposed for these reasons to refer the appointment to some other source. The people at large was in his opinion the fittest in itself. It would be as likely as any that could be devised to produce an Executive Magistrate of distinguished Character. The people generally could only know & vote for some Citizen whose merits had rendered him an object of general attention & esteem. There was one difficulty however of a serious nature attending an immediate choice by the people. The right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election on the score of the Negroes. The substitution of electors obviated this difficulty and seemed on the whole to be liable to fewest objections.

Mr. Gerry. If the Executive is to be elected by the Legislature he certainly ought not to be reeligible. This would make him absolutely dependent. He was agst a popular election. The people are uninformed, and would be misled by a few designing men. He urged the expediency of an appointment of the Executive by Electors to be chosen

by the State Executives. The people of the States will then choose the 1st branch; the legislatures of the States the 2d branch of the National Legislature, and the Executives of the States, the National Executive. This he thought would form a strong attachmt in the States to the National System. The popular mode of electing the chief Magistrate would certainly be the worst of all. If he should be so elected & should do his duty, he will be turned out for it like Govr Bowdoin in Masts & President Sullivan in N. Hamshire.

On the question on Mr Govr Morris motion to reconsider generally the Constitution of the Executive

Mas. ay. Ct ay. N. J. ay. & all the others ay.

Mr Elseworth moved to strike out the appointmt by the Natl Legislature, and to insert, to be chosen by electors appointed by the Legislatures of the States in the following ratio; to wit — one for each State not exceeding 200,000[1] inhabts two for each above yt number & not exceeding 300,000. and three for each State exceeding 300,000.—Mr Broome 2ded the motion.[2]

Mr Rutlidge was opposed to all the modes, except the appointmt by the Natl Legislature. He will be sufficiently independent, if he be not re-eligible.

Mr Gerry preferred the motion of Mr Elseworth to

[1] The Journal gives it 100,000.—*Journal of the Federal Convention*, 190.

[2] "Mr. Broom is a plain good Man, with some abilities, but nothing to render him conspicuous. He is silent in public, but chearful and conversable in private. He is about 35 years old."—Pierce's notes, *Am. Hist. Rev.*, iii., 330.

an appointm^{t} by the Nat^{l} Legislature, or by the people; tho' not to an app^{t} by the State Executives. He moved that the electors proposed by Mr E. should be 25 in number, and allotted in the following proportion. to N. H. 1. to Mas. 3. to R. I. 1. to Con^{t} 2. to N. Y. 2. N. J. 2. P^{a} 3. Del. 1. M^{d} 2. V^{a} 3. N. C. 2. S. C. 2. Geo. 1.

The question as moved by Mr Elseworth being divided, on the 1st part shall ye Nat^{l} Executive be appointed by Electors?

Mas. div^{d} Con^{t} ay. N. J. ay. P^{a} ay. Del. ay. M^{d} ay. V^{a} ay. N. C. no. S. C. no. Geo. no.

On 2^{d} part shall the Electors be chosen by the State Legislatures?

Mas. ay. Con^{t} ay. N. J. ay. P^{a} ay. Del. ay. M^{d} ay. V^{a} no. N. C. ay. S. C. no. Geo. ay.

The part relating to the ratio in which the States s^{d} chuse electors was postponed nem. con.

Mr L. Martin moved that the Executive be ineligible a 2^{d} time.

Mr Williamson, 2^{ds} the motion. He had no great confidence in Electors to be chosen for the special purpose. They would not be the most respectable citizens; but persons not occupied in the high offices of Gov^{t} They would be liable to undue influence, which might the more readily be practised as some of them will probably be in appointment 6 or 8 months before the object of it comes on.

Mr Elseworth supposed any persons might be appointed Electors, excepting, solely, members of the Nat^{l} Legislature.

On the question Shall he be ineligible a 2d time?

Mas. no. Ct. no. N. J. no. Pa. no. Del. no. Md. no. Va. no. N. C. ay. S. C. ay. Geo. no.

On the question Shall the Executive continue for 7 years? It passed in the negative

Mas. divd. Cont. ay.[1] N. J. no. Pa. no. Del. no. Md. no. Va. no. N. C. divd. S. C. ay. Geo. ay.

Mr. King was afraid we shd. shorten the term too much.

Mr. Govr. Morris was for a short term, in order to avoid impeachts. which wd. be otherwise necessary.

Mr. Butler was agst. the frequency of the elections. Geo. & S. C. were too distant to send electors often.

Mr. Elseworth was for 6. years. If the elections be too frequent, the Executive will not be firm eno. There must be duties which will make him unpopular for the moment. There will be *outs* as well as *ins*. His administration therefore will be attacked and misrepresented.

Mr. Williamson was for 6 years. The expence will be considerable & ought not to be unnecessarily repeated. If the Elections are too frequent, the best men will not undertake the service and those of an inferior character will be liable to be corrupted.

On the question for 6 years?

Mas. ay. Cont. ay. N. J. ay. Pa. ay. Del. no. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Adjourned

[1] In the printed Journal Cont, no: N. Jersey ay.—Madison's Note.

FRIDAY JULY 20. IN CONVENTION.

The postponed Ratio of Electors for appointing the Executive; to wit 1 for each State whose inhabitants do not exceed 100.000. &c. being taken up.

Mr Madison observed that this would make in time all or nearly all the States equal. Since there were few that would not in time contain the number of inhabitants intitling them to 3 Electors; that this ratio ought either to be made temporary, or so varied as that it would adjust itself to the growing population of the States.

Mr Gerry moved that in the *1st instance* the Electors should be allotted to the States in the following ratio: to N. H. 1. Mass. 3. R. I. 1. Con^t^ 2. N. Y. 2. N. J. 2. P^a^ 3. Del. 1. M^d^ 2. V^a^ 3. N. C. 2. S. C. 2. Geo. 1.

On the question to postpone in order to take up this motion of Mr Gerry. It passed in the affirmative

Mass. ay. Con^t^ no. N. J. no. P^a^ ay. Del. no. M^d^ no. V^a^ ay. N. C. ay. S. C. ay. Geo. ay.

Mr Elseworth moved that 2 Electors be allotted to N. H. Some rule ought to be pursued; and N. H. has more than 100,000 inhabitants. He thought it would be proper also to allot 2. to Georgia

Mr Broom & Mr Martin moved to postpone Mr Gerry's allotment of Electors, leaving a fit ratio to be reported by the Committee to be appointed for detailing the Resolutions.

On this motion,

Mass. no. C^t^ no. N. J. ay. P^a^ no. Del. ay. M^d^ ay. V^a^ no. N. C. no. S. C. no. Geo. no.

Mr Houston 2^ded the motion of Mr Elseworth to add another Elector to N. H. & Georgia. On the Question;

Mass. no. C^t ay. N. J. no. P^a no. Del. no. M^d no. V^a no. N. C. no. S. C. ay. Geo. ay.

Mr Williamson moved as an amendment to Mr Gerry's allotment of Electors in the 1st instance that in future elections of the Nat^l Executive, the number of Electors to be appointed by the several States shall be regulated by their respective numbers of Representatives in the 1st branch pursuing as nearly as may be the present proportions.

On question on Mr Gerry's ratio of Electors

Mass. ay. C^t ay. N. J. no. P^a ay. Del. no. M^d no. V^a ay. N. C. ay. S. C. ay. Geo. no.

"to be removable on impeachment and conviction for malpractice or neglect of duty," see Resol. 9.

Mr Pinkney & Mr Govr Morris moved to strike out this part of the Resolution. Mr P. observ^d he ought not to be impeachable whilst in office.

Mr Davie. If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behaviour of the Executive.

Mr Wilson concurred in the necessity of making the Executive impeachable whilst in office.

Mr Govr Morris. He can do no criminal act without Coadjutors who may be punished. In case he should be re-elected, that will be a sufficient proof of his innocence. Besides who is to impeach? Is the

impeachment to suspend his functions. If it is not the mischief will go on. If it is the impeachment will be nearly equivalent to a displacement, and will render the Executive dependent on those who are to impeach.

Col. Mason. No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice? When great crimes were committed he was for punishing the principal as well as the Coadjutors. There had been much debate & difficulty as to the mode of chusing the Executive. He approved of that which had been adopted at first, namely of referring the appointment to the Nat^{l} Legislature. One objection agst Electors was the danger of their being corrupted by the Candidates, & this furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?

Doc^{r} Franklin was for retaining the clause as favorable to the Executive. History furnishes one example only of a first Magistrate being formally brought to public Justice. Every body cried out agst this as unconstitutional. What was the practice before this in cases where the Chief Magistrate rendered himself obnoxious? Why recourse was had to assassination in wch he was not only deprived of his life but of the opportunity of vindicating his

character. It w^d^ be the best way therefore to provide in the Constitution for the regular punishment of the Executive where his misconduct should deserve it, and for his honorable acquittal where he should be unjustly accused.

Mr Govr Morris admits corruption & some few other offences to be such as ought to be impeachable; but thought the cases ought to be enumerated & defined.

Mr Madison thought it indispensable that some provision should be made for defending the Community ag^st^ the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers. The case of the Executive Magistracy was very distinguishable, from that of the Legislature or any other public body, holding offices of limited duration. It could not be presumed that all or even a majority of the members of an Assembly would either lose their capacity for discharging, or be bribed to betray, their trust. Besides the restraints of their personal integrity & honor, the difficulty of acting in concert for purposes of corruption was a security to the Public. And if one or a few members only should be seduced, the soundness of the remaining members, would maintain the integrity and fidelity of the body. In the case of the Executive Magistracy which was to be administered

by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.

Mr Pinkney did not see the necessity of impeachments. He was sure they ought not to issue from the Legislature who would in that case hold them as a rod over the Executive and by that means effectually destroy his independence. His revisionary power in particular would be rendered altogether insignificant.

Mr Gerry urged the necessity of impeachments. A good Magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here that the chief magistrate could do no wrong.

Mr King expressed his apprehensions that an extreme caution in favor of liberty might enervate the Government we were forming. He wished the House to recur to the primitive axiom that the three great departments of Gov^ts^ should be separate & independent: that the Executive & Judiciary should be so as well as the Legislative: that the Executive should be so equally with the Judiciary. Would this be the case, if the Executive should be impeachable? It had been said that the Judiciary would be impeachable. But it should have been remembered at the same time that the Judiciary hold their places not for a limited time, but during good behaviour. It is necessary therefore that a form should be established for trying misbehaviour. Was the Executive to hold his place during good behaviour? The Exec-

a forum out of the Judges belonging to the States: and even of requiring some preliminary inquest whether just ground of impeachment existed.

Doct[r] Franklin mentioned the case of the Prince of Orange during the late war. An agreement was made between France & Holland; by which their two fleets were to unite at a certain time & place. The Dutch fleet did not appear. Every body began to wonder at it. At length it was suspected that the Statholder was at the bottom of the matter. This suspicion prevailed more & more. Yet as he could not be impeached and no regular examination took place, he remained in his office, and strengthening his own party, as the party opposed to him became formidable, he gave birth to the most violent animosities & contentions. Had he been impeachable, a regular & peaceable enquiry would have taken place and he would if guilty have been duly punished, if innocent restored to the confidence of the Public.

M[r] King remarked that the case of the Statholder was not applicable. He held his place for life, and was not periodically elected. In the former case impeachments are proper to secure good behaviour. In the latter they are unnecessary; the periodical responsibility to the electors being an equivalent security.

M[r] Wilson observed that if the idea were to be pursued, the Senators who are to hold their places during the same term with the Executive, ought to be subject to impeachment & removal.

M[r] Pinkney apprehended that some gentlemen

reasoned on a supposition that the Executive was to have powers which would not be committed to him: He presumed that his powers would be so circumscribed as to render impeachments unnecessary.

Mr. Govr. Morris's opinion had been changed by the arguments used in the discussion. He was now sensible of the necessity of impeachments, if the Executive was to continue for any length of time in office. Our Executive was not like a Magistrate having a life interest, much less like one having an hereditary interest in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in forign pay, without being able to guard agst. it by displacing him. One would think the King of England well secured agst. bribery. He has as it were a fee simple in the whole Kingdom. Yet Charles II. was bribed by Louis XIV. The Executive ought therefore to be impeachable for treachery: Corrupting his electors, and incapacity were other causes of impeachment. For the latter he should be punished not as a man, but as an officer, and punished only by degradation from his office. This Magistrate is not the King but the prime Minister. The people are the King. When we make him amenable to Justice however we should take care to provide some mode that will not make him dependent on the Legislature.

It was moved & 2ded. to postpone the question of impeachments which was negatived, Mas. & S. Carolina only being ay.

On ye Question, Shall the Executive be removable on impeachments &c.?

Mass. no. C^t^ ay. N. J. ay. P^a^ ay. Del. ay. M^d^ ay. V^a^ ay. N. C. ay. S. C. no. Geo. ay.

"Executive to receive fixed compensation." Agreed to nem. con.

"to be paid out of the national Treasury" agreed to, N. Jersey only in the negative.

Mr Gerry & Govr Morris moved that the Electors of the Executive shall not be members of the Nat^l^ Legislature, nor officers of the U. States, nor shall the Electors themselves be eligible to the supreme magistracy. Agreed to nem. con.

Doc^r^ McClurg [1] asked whether it would not be necessary, before a Committee for detailing the Constitution should be appointed, to determine on the means by which the Executive, is to carry the laws into effect, and to resist combinations ag^st^ them. Is he to have a military force for the purpose, or to have the command of the Militia, the only existing force that can be applied to that use? As the Resolutions now stand the Committee will have no determinate directions on this great point.

Mr Wilson thought that some additional directions to the Committee w^d^ be necessary.

[1] "Mr. McLurg is a learned physician, but having never appeared before in public life his character as a politician is not sufficiently known. He attempted once or twice to speak, but with no great success. It is certain that he has a foundation of learning, on which, if he pleases, he may erect a character of high renown. The Doctor is about 38 years of age, a Gentleman of great resp.ctability, and of a fair and unblemished character."—Pierce's Notes, *Am. Hist. Rev.*, iii., 332.

Mr King. The Committee are to provide for the end. Their discretionary power to provide for the means is involved according to an established axiom.

Adjourned

SATURDAY JULY 21 IN CONVENTION

Mr Williamson moved that the Electors of the Executive should be paid out of the National Treasury for the Service to be performed by them. Justice required this: as it was a national service they were to render. The motion was agreed to Nem. Con.

Mr Wilson moved as an amendment to Resoln 10. that the supreme Natl Judiciary should be associated with the Executive in the Revisionary power. This proposition had been before made and failed: but he was so confirmed by reflection in the opinion of its utility, that he thought it incumbent on him to make another effort: The Judiciary ought to have an opportunity of remonstrating agst projected encroachments on the people as well as on themselves. It had been said that the Judges, as expositors of the Laws would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the Judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive; and yet may not be so unconstitutional as to justify the Judges in refusing to give them effect. Let them

have a share in the Revisionary power, and they will have an opportunity of taking notice of these characters of a law, and of counteracting, by the weight of their opinions the improper views of the Legislature.—Mr. Madison 2ded the motion

Mr. Ghorum did not see the advantage of employing the Judges in this way. As Judges they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures. Nor can it be necessary as a security for their constitutional rights. The Judges in England have no such additional provision for their defence, yet their jurisdiction is not invaded. He thought it would be best to let the Executive alone be responsible, and at most to authorize him to call on Judges for their opinions.

Mr. Elseworth approved heartily of the motion. The aid of the Judges will give more wisdom & firmness to the Executive. They will possess a systematic and accurate knowledge of the Laws, which the Executive cannot be expected always to possess. The Law of Nations also will frequently come into question. Of this the Judges alone will have competent information.

Mr. Madison considered the object of the motion as of great importance to the meditated Constitution. It would be useful to the Judiciary departm.t by giving it an additional opportunity of defending itself agst. Legislative encroachments: It would be useful to the Executive, by inspiring additional confidence & firmness in exerting the revisionary power:

It would be useful to the Legislature by the valuable assistance it would give in preserving a consistency, conciseness, perspicuity & technical propriety in the laws, qualities peculiarly necessary; & yet shamefully wanting in our republican Codes. It would moreover be useful to the Community at large as an additional check agst a pursuit of those unwise & unjust measures which constituted so great a portion of our calamities. If any solid objection could be urged agst the motion, it must be on the supposition that it tended to give too much strength either to the Executive or Judiciary. He did not think there was the least ground for this apprehension. It was much more to be apprehended that notwithstanding this co-operation of the two departments, the Legislature would still be an overmatch for them. Experience in all the States had evinced a powerful tendency in the Legislature to absorb all power into its vortex. This was the real source of danger to the American Constitutions; & suggested the necessity of giving every defensive authority to the other departments that was consistent with Republican principles.

Mr Mason said he had always been a friend to this provision. It would give a confidence to the Executive, which he would not otherwise have, and without which the Revisionary power would be of little avail.

Mr Gerry did not expect to see this point which had undergone full discussion, again revived. The object he conceived of the Revisionary power was merely to secure the Executive department agst

legislative encroachment. The Executive therefore who will best know and be ready to defend his rights ought alone to have the defence of them. The motion was liable to strong objections. It was combining & mixing together the Legislative & the other departments. It was establishing an improper coalition between the Executive & Judiciary departments. It was making statesmen of the Judges; and setting them up as the guardians of the Rights of the people. He relied for his part on the Representatives of the people as the guardians of their Rights & interests. It was making the Expositors of the Laws, the Legislators which ought never to be done. A better expedient for correcting the laws, would be to appoint as had been done in Pen[a], a person or persons of proper skill, to draw bills for the Legislature.

M[r] Strong thought with M[r] Gerry that the power of making ought to be kept distinct from that of expounding, the laws. No maxim was better established. The Judges in exercising the function of expositors might be influenced by the part they had taken in framing the laws.

M[r] Gov[r] Morris. Some check being necessary on the Legislature, the question is in what hands it should be lodged. On one side it was contended that the Executive alone ought to exercise it. He did not think that an Executive appointed for 6 years, and impeachable whilst in office w[d] be a very effectual check. On the other side it was urged that he ought to be reinforced by the Judiciary department. Ag[st] this it was objected that Expositors of

laws ought to have no hand in making them, and arguments in favor of this had been drawn from England. What weight was due to them might be easily determined by an attention to facts. The truth was that the Judges in England had a great share in ye Legislation. They are consulted in difficult & doubtful cases. They may be & some of them are members of the Legislature. They are or may be members of the privy Council, and can there advise the Executive as they will do with us if the motion succeeds. The influence the English Judges may have in the latter capacity in strengthening the Executive check can not be ascertained, as the King by his influence in a manner dictates the laws. There is one difference in the two cases however which disconcerts all reasoning from the British to our proposed Constitution. The British Executive has so great an interest in his prerogatives and such powerful means of defending them that he will never yield any part of them. The interest of our Executive is so inconsiderable & so transitory, and his means of defending it so feeble, that there is the justest ground to fear his want of firmness in resisting incroachments. He was extremely apprehensive that the auxiliary firmness & weight of the Judiciary would not supply the deficiency. He concurred in thinking the public liberty in greater danger from Legislative usurpations than from any other source. It had been said that the Legislature ought to be relied on as the proper Guardians of liberty. The answer was short and conclusive. Either bad laws will be

pushed or not. On the latter supposition no check will be wanted. On the former a strong check will be necessary: and this is the proper supposition. Emissions of paper money, largesses to the people— a remission of debts and similar measures, will at some times be popular, and will be pushed for that reason. At other times such measures will coincide with the interests of the Legislature themselves, & that will be a reason not less cogent for pushing them. It may be thought that the people will not be deluded and misled in the latter case. But experience teaches another lesson. The press is indeed a great means of diminishing the evil, yet it is found to be unable to prevent it altogether.

Mr L. Martin, considered the association of the Judges with the Executive as a dangerous innovation; as well as one which could not produce the particular advantage expected from it. A knowledge of Mankind, and of Legislative affairs cannot be presumed to belong in a higher degree to the Judges than to the Legislature. And as to the Constitutionality of laws, that point will come before the Judges in their proper official character. In this character they have a negative on the laws. Join them with the Executive in the Revision and they will have a double negative. It is necessary that the Supreme Judiciary should have the confidence of the people. This will soon be lost, if they are employed in the task of remonstrating agst popular measures of the Legislature. Besides in what mode & proportion are they to vote in the Council of Revision?

Mr Madison could not discover in the proposed association of the Judges with the Executive in the Revisionary check on the Legislature any violation of the maxim which requires the great departments of power to be kept separate & distinct. On the contrary he thought it an auxiliary precaution in favor of the maxim. If a Constitutional discrimination of the departments on paper were a sufficient security to each ag^st^ encroachments of the others, all further provisions would indeed be superfluous. But experience had taught us a distrust of that security; and that it is necessary to introduce such a balance of powers and interests as will guarantee the provisions on paper. Instead therefore of contenting ourselves with laying down the Theory in the Constitution that each department ought to be separate & distinct, it was proposed to add a defensive power to each which should maintain the Theory in practice. In so doing we did not blend the departments together. We erected effectual barriers for keeping them separate. The most regular example of this theory was in the British Constitution. Yet it was not only the practice there to admit the Judges to a seat in the legislature, and in the Executive Councils, and to submit to their previous examination all laws of a certain description, but it was a part of their Constitution that the Executive might negative any law whatever; a part of *their* Constitution which had been universally regarded as calculated for the preservation of the whole. The objection ag^st^ a union of the Judiciary & Executive branches

in the revision of the laws, had either no foundation or was not carried far enough. If such a Union was an improper mixture of powers, or such a Judiciary check on the laws, was inconsistent with the Theory of a free Constitution, it was equally so to admit the Executive to any participation in the making of laws; and the revisionary plan ought to be discarded altogether.

Col. Mason observed that the defence of the Executive was not the sole object of the Revisionary power. He expected even greater advantages from it. Notwithstanding the precautions taken in the Constitution of the Legislature, it would still so much resemble that of the individual States, that it must be expected frequently to pass unjust and pernicious laws. This restraining power was therefore essentially necessary. It would have the effect not only of hindering the final passage of such laws; but would discourage demagogues from attempting to get them passed. It has been said (by Mr L. Martin) that if the Judges were joined in this check on the laws, they would have a double negative, since in their expository capacity of Judges they would have one negative. He would reply that in this capacity they could impede in one case only, the operation of laws. They could declare an unconstitutional law void. But with regard to every law however unjust oppressive or pernicious, which did not come plainly under this description, they would be under the necessity as Judges to give it a free course. He wished the further use to be made of the Judges, of

giving aid in preventing every improper law. Their aid will be the more valuable as they are in the habit and practice of considering laws in their true principles, and in all their consequences.

Mr Wilson. The separation of the departments does not require that they should have separate objects but that they should act separately tho' on the same objects. It is necessary that the two branches of the Legislature should be separate and distinct, yet they are both to act precisely on the same object.

Mr Gerry had rather give the Executive an absolute negative for its own defence than thus to blend together the Judiciary & Executive departments. It will bind them together in an offensive and defensive alliance agst the Legislature, and render the latter unwilling to enter into a contest with them.

Mr Govr Morris was surprised that any defensive provision for securing the effectual separation of the departments should be considered as an improper mixture of them. Suppose that the three powers, were to be vested in three persons, by compact among themselves; that one was to have the power of making, another of executing, and a third of judging, the laws. Would it not be very natural for the two latter after having settled the partition on paper, to observe, and would not candor oblige the former to admit, that as a security agst legislative acts of the former which might easily be so framed as to undermine the powers of the two others, the two others ought to be armed with a veto for

their own defence, or at least to have an opportunity of stating their objections agst acts of encroachment? And would any one pretend that such a right tended to blend & confound powers that ought to be separately exercised? As well might it be said that If three neighbours had three distinct farms, a right in each to defend his farm agst his neighbours, tended to blend the farms together.

Mr Ghorum. All agree that a check on the Legislature is necessary. But there are two objections agst admitting the Judges to share in it which no observations on the other side seem to obviate, the 1st is that the Judges ought to carry into the exposition of the laws no prepossessions with regard to them. 2^{d} that as the Judges will outnumber the Executive, the revisionary check would be thrown entirely out of the Executive hands, and instead of enabling him to defend himself, would enable the Judges to sacrifice him.

Mr Wilson. The proposition is certainly not liable to all the objections which have been urged agst it. According (to Mr Gerry) it will unite the Executive & Judiciary in an offensive & defensive alliance agst the Legislature. According to Mr Ghorum it will lead to a subversion of the Executive by the Judiciary influence. To the first gentleman the answer was obvious: that the joint weight of the two departments was necessary to balance the single weight of the Legislature. To the 1st objection stated by the other Gentleman it might be answered that supposing the prepossession to mix itself with

the exposition, the evil would be overbalanced by the advantages promised by the expedient. To the 2d objection, that such a rule of voting might be provided in the detail as would guard agst it.

Mr Rutlidge thought the Judges of all men the most unfit to be concerned in the revisionary Council. The Judges ought never to give their opinion on a law till it comes before them. He thought it equally unnecessary. The Executive could advise with the officers of State, as of war, finance &c. and avail himself of their information & opinions.

On Question on Mr Wilson's motion for joining the Judiciary in the Revision of laws it passed in the negative—

Mass. no. Cont ay. N. J. not present. Pa divd. Del. no. Md ay. Va ay. N. C. no. S. C. no. Geo. divd.

Resol. 10, giving the Ex a qualified veto, without the amendt was then agd to nem. con.

The motion made by Mr Madison July 18. & then postponed, "that the Judges shd be nominated by the Executive & such nominations become appointments unless disagreed to by $^2/_3$ of the 2d branch of the Legislature," was now resumed.

Mr Madison stated as his reasons for the motion. 1. that it secured the responsibility of the Executive who would in general be more capable & likely to select fit characters than the Legislature, or even the 2d b. of it, who might hide their selfish motives under the number concerned in the appointment. 2 that in case of any flagrant partiality or error, in

the nomination it might be fairly presumed that $^2/_3$ of the 2^d branch would join in putting a negative on it. 3. that as the 2^d b. was very differently constituted when the appointment of the Judges was formerly referred to it, and was now to be composed of equal votes from all the States, the principle of compromise which had prevailed in other instances required in this that there sh^d be a concurrence of two authorities, in one of which the people, in the other the States should be represented. The Executive Magistrate w^d be considered as a national officer, acting for and equally sympathizing with every part of the U. States. If the 2^d branch alone should have this power, the Judges might be appointed by a minority of the people, tho' by a majority, of the States, which could not be justified on any principle as their proceedings were to relate to the people, rather than to the States: and as it would moreover throw the appointments entirely into the hands of ye Northern States, a perpetual ground of jealousy & discontent would be furnished to the Southern States.

Mr Pinkney was for placing the appointm^t in the 2^d b. exclusively. The Executive will possess neither the requisite knowledge of characters, nor confidence of the people for so high a trust.

Mr Randolph w^d have preferred the mode of appointm^t proposed formerly by Mr Ghorum, as adopted in the Constitution of Mass^{ts} but thought the motion depending so great an improvement of the clause as it stands, that he anxiously wished it success. He

laid great stress on the responsibility of the Executive as a security for fit appointments. Appointments by the Legislatures have generally resulted from cabal, from personal regard, or some other consideration than a title derived from the proper qualifications. The same inconveniences will proportionally prevail if the appointments be referred to either branch of the Legislature or to any other authority administered by a number of individuals.

Mr Elseworth would prefer a negative in the Executive on a nomination by the 2d branch, the negative to be overruled by a concurrence of $^2/_3$ of the 2d b. to the mode proposed by the motion; but preferred an absolute appointment by the 2d branch to either. The Executive will be regarded by the people with a jealous eye. Every power for augmenting unnecessarily his influence will be disliked. As he will be stationary it was not to be supposed he could have a better knowledge of characters. He will be more open to caresses & intrigues than the Senate. The right to supersede his nomination will be ideal only. A nomination under such circumstances will be equivalent to an appointment.

Mr Govr Morris supported the motion. 1. The States in their corporate capacity will frequently have an interest staked on the determination of the Judges. As in the Senate the States are to vote the Judges ought not to be appointed by the Senate. Next to the impropriety of being Judge in one's own cause, is the appointment of the Judge. 2. It had been said the Executive would be uninformed of

characters. The reverse was ye truth. The Senate will be so. They must take the character of candidates from the flattering pictures drawn by their friends. The Executive in the necessary intercourse with every part of the U. S. required by the nature of his administration, will or may have the best possible information. 3. It had been said that a jealousy would be entertained of the Executive. If the Executive can be safely trusted with the command of the army, there cannot surely be any reasonable ground of Jealousy in the present case. He added that if the Objections ag^st^ an appointment of the Executive by the Legislature, had the weight that had been allowed there must be some weight in the objection to an appointment of the Judges by the Legislature or by any part of it.

Mr Gerry. The appointment of the Judges like every other part of the Constitution sh^d^ be so modelled as to give satisfaction both to the people and to the States. The mode under consideration will give satisfaction to neither. He could not conceive that the Executive could be as well informed of characters throughout the Union, as the Senate. It appeared to him also a strong objection that $^2/_3$ of the Senate were required to reject a nomination of the Executive. The Senate would be constituted in the same manner as Congress. And the appointments of Congress have been generally good.

Mr Madison, observed that he was not anxious that $^2/_3$ should be necessary to disagree to a nomination. He had given this form to his motion chiefly

to vary it the more clearly from one which had just been rejected. He was content to obviate the objection last made, and accordingly so varied the motion as to let a majority reject.

Col. Mason found it his duty to differ from his colleagues in their opinions & reasonings on this subject. Notwithstanding the form of the proposition by which the appointment seemed to be divided between the Executive & Senate, the appointment was Substantially vested in the former alone. The false complaisance which usually prevails in such cases will prevent a disagreement to the first nominations. He considered the appointment by the Executive as a dangerous prerogative. It might even give him an influence over the Judiciary department itself. He did not think the difference of interest between the Northern and Southern States could be properly brought into this argument. It would operate & require some precautions in the case of regulating navigation, commerce & imposts; but he could not see that it had any connection with the Judiciary department.

On the question, the motion now being "that the executive should nominate & such nominations should become appointments unless disagreed to by the Senate"

Mass. ay. Ct. no. Pa. ay. Del. no. Md. no. Va. ay. N. C. no. S. C. no. Geo. no.

On question for agreeing to the clause as it stands by which the Judges are to be appointed by the 2d branch

Mass. no. Ct. ay. Pa. no. Del. ay. Md. ay. Va. no. N. C. ay. S. C. ay. Geo. ay.

Adjourned

MONDAY JULY 23. IN CONVENTION

Mr. John Langdon & Mr. Nicholas Gilman[1] from N. Hampshire,[2] took their seats.

Resol: n 17. that provision ought to be made for future amendments of the Articles of Union, agreed to, nem. con.

Resoln 18. "requiring the Legis: Execut: & Judy of the States to be bound by oath to support the articles of Union," taken into consideration.

Mr. Williamson suggests that a reciprocal oath should be required from the National officers, to support the Governments of the States.

Mr. Gerry moved to insert as an amendmt that the oath of the officers of the National Government also should extend to the support of the Natl Govt which was agreed to nem. con.

Mr. Wilson said he was never fond of oaths, considering them as a left handed security only. A good Govt did not need them, and a bad one could not or ought not to be supported. He was afraid

[1] Mr. Gilman is modest, genteel, and sensible. There is nothing brilliant or striking in his character, but there is something respectable and worthy in the man.—About 30 years of age."—Pierce's Notes, *Am. Hist. Rev.*, iii., 325.

He did not speak in the convention.

[2] The act appointing deputies to the convention was not passed by the New Hampshire Legislature till June 27, 1787.—*Journal of Federal Convention*, 17.

they might too much trammel the members of the existing Gov^t in case future alterations should be necessary; and prove an obstacle to Resol: 17. just ag^d to.

Mr Ghorum did not know that oaths would be of much use; but could see no inconsistency between them and the 17. Resol. or any regular amend^t of the Constitution. The oath could only require fidelity to the existing Constitution. A constitutional alteration of the Constitution, could never be regarded as a breach of the Constitution, or of any oath to support it.

Mr Gerry thought with Mr Ghorum there could be no shadow of inconsistency in the case. Nor could he see any other harm that could result from the Resolution. On the other side he thought one good effect would be produced by it. Hitherto the officers of the two Governments had considered them as distinct from, and not as parts of the General System, & had in all cases of interference given a preference to the State Gov^ts The proposed oath will cure that error.

The Resol^n (18) was agreed to nem. con.

Resol: 19. referring the new Constitution to Assemblies to be chosen by the people for the express purpose of ratifying it was next taken into consideration.

Mr Elseworth moved that it be referred to the Legislatures of the States for ratification. Mr Patterson 2^ded the motion.

Col. Mason considered a reference of the plan to

the authority of the people as one of the most important and essential of the Resolutions. The Legislatures have no power to ratify it. They are the mere creatures of the State Constitutions, and cannot be greater than their creators. And he knew of no power in any of the Constitutions, he knew there was no power in some of them, that could be competent to this object. Whither then must we resort? To the people with whom all power remains that has not been given up in the Constitutions derived from them. It was of great moment he observed that this doctrine should be cherished as the basis of free Government. Another strong reason was that admitting the Legislatures to have a competent authority, it would be wrong to refer the plan to them, because succeeding Legislatures having equal authority could undo the acts of their predecessors; and the National Gov^{t} would stand in each State on the weak and tottering foundation of an Act of Assembly. There was a remaining consideration of some weight. In some of the States the Gov^{ts} were not derived from the clear & undisputed authority of the people. This was the case in Virginia Some of the best & wisest citizens considered the Constitution as established by an assumed authority. A national Constitution derived from such a source would be exposed to the severest criticisms.

Mr Randolph. One idea has pervaded all our proceedings, to wit, that opposition as well from the States as from individuals, will be made to the System to be proposed. Will it not then be highly

imprudent, to furnish any unnecessary pretext by the mode of ratifying it. Added to other objections agst a ratification by the Legislative authority only, it may be remarked that there have been instances in which the authority of the Common law has been set up in particular States agst that of the Confederation which has had no higher sanction than Legislative ratification.—Whose opposition will be most likely to be excited agst the System? That of the local demagogues who will be degraded by it from the importance they now hold. These will spare no efforts to impede that progress in the popular mind which will be necessary to the adoption of the plan, and which every member will find to have taken place in his own, if he will compare his present opinions with those brought with him into the Convention. It is of great importance therefore that the consideration of this subject should be transferred from the Legislatures where this class of men, have their full influence to a field in which their efforts can be less mischievous. It is moreover worthy of consideration that some of the States are averse to any change in their Constitution, and will not take the requisite steps, unless expressly called upon to refer the question to the people.

Mr Gerry. The arguments of Col. Mason & Mr Randolph prove too much. They prove an unconstitutionality in the present federal system & even in some of the State Gov^{ts} Inferences drawn from such a source must be inadmissible. Both the State Gov^{ts} & the federal Gov^{t} have been too long

acquiesced in, to be now shaken. He considered the Confederation to be paramount to any State Constitution. The last article of it authorizing alterations must consequently be so as well as the others, and every thing done in pursuance of the article must have the same high authority with the article. Great confusion he was confident would result from a recurrence to the people. They would never agree on any thing. He could not see any ground to suppose that the people will do what their rulers will not. The rulers will either conform to, or influence the sense of the people.

Mr Ghorum was ag^st^ referring the plan to the Legislatures. 1. Men chosen by the people for the particular purpose, will discuss the subject more candidly than members of the Legislature who are to lose the power which is to be given up to the Genl Gov^t^ 2. Some of the Legislatures are composed of several branches. It will consequently be more difficult in these cases to get the plan through the Legislatures, than thro' a Convention. 3. in the States many of the ablest men are excluded from the Legislatures, but may be elected into a convention. Among these may be ranked many of the Clergy who are generally friends to good Government. Their services were found to be valuable in the formation & establishment of the Constitution of Massach^ts^ 4. the Legislatures will be interrupted with a variety of little business, by artfully pressing which designing men will find means to delay from year to year, if not to frustrate altogether the national system.

5. If the last art: of the Confederation is to be pursued the unanimous concurrence of the States will be necessary. But will any one say, that all the States are to suffer themselves to be ruined, if Rho. Island should persist in her opposition to general measures. Some other States might also tread in her steps. The present advantage which N. York seems to be so much attached to, of taxing her neighbours by the regulation of her trade, makes it very probable, that she will be of the number. It would therefore deserve serious consideration whether provision ought not to be made for giving effect to the System without waiting for the unanimous concurrence of the States.

Mr Elseworth. If there be any Legislatures who should find themselves incompetent to the ratification, he should be content to let them advise with their constituents and pursue such a mode as w^{d} be competent. He thought more was to be expected from the Legislatures than from the people. The prevailing wish of the people in the Eastern States is to get rid of the public debt; and the idea of strengthening the Nat^{l} Gov^{t} carries with it that of strengthening the public debt. It was said by Col. Mason 1. that the Legislatures have no authority in this case. 2. that their successors having equal authority could rescind their acts. As to the 2^{d} point he could not admit it to be well founded. An Act to which the States by their Legislatures, make themselves parties, becomes a compact from which no one of the parties can recede of itself. As to the

1st point, he observed that a new sett of ideas seemed to have crept in since the articles of Confederation were established. Conventions of the people, or with power derived expressly from the people, were not then thought of. The Legislatures were considered as competent. Their ratification has been acquiesced in without complaint. To whom have Congs applied on subsequent occasions for further powers? To the Legislatures; not to the people. The fact is that we exist at present, and we need not enquire how, as a federal Society, united by a charter one article of which is that alterations therein may be made by the Legislative authority of the States. It has been said that if the confederation is to be observed, the States must *unanimously* concur in the proposed innovations. He would answer that if such were the urgency & necessity of our situation as to warrant a new compact among a part of the States, founded on the consent of the people; the same pleas would be equally valid in favor of a partial compact, founded on the consent of the Legislatures.

Mr Williamson thought the Resol:n (19) so expressed as that it might be submitted either to the Legislatures or to Conventions recommended by the Legislatures. He observed that some Legislatures were evidently unauthorized to ratify the system. He thought too that Conventions were to be preferred as more likely to be composed of the ablest men in the States.

Mr Govr Morris considered the inference of Mr Else-

worth from the plea of necessity as applied to the establishment of a new System on ye consent of the people of a part of the States, in favor of a like establishm^t^ on the consent of a part of the Legislatures, as a non sequitur. If the Confederation is to be pursued no alteration can be made without the unanimous consent of the Legislatures: Legislative alterations not conformable to the federal compact, would clearly not be valid. The Judges would consider them as null & void. Whereas in case of an appeal to the people of the U. S., the supreme authority, the federal compact may be altered by a *majority of them;* in like manner as the Constitution of a particular State may be altered by a majority of the people of the State. The amendm^t^ moved by Mr Elseworth erroneously supposes that we are proceeding on the basis of the Confederation. This Convention is unknown to the Confederation.

Mr King thought with Mr Elseworth that the Legislatures had a competent authority, the acquiescence of the people of America in the Confederation, being equivalent to a formal ratification by the people. He thought with Mr E. also that the plea of necessity was as valid in the one case as the other. At the same time he preferred a reference to the authority of the people expressly delegated to Conventions, as the most certain means of obviating all disputes & doubts concerning the legitimacy of the new Constitution; as well as the most likely means of drawing forth the best men in the States to decide on it. He remarked that among other objections

made in the State of N. York to granting powers to Cong[s] one had been that such powers as would operate within the State, could not be reconciled to the Constitution; and therefore were not grantible by the Legislative authority. He considered it as of some consequence also to get rid of the scruples which some members of the State Legislatures might derive from their oaths to support & maintain the existing Constitutions.

M[r] Madison thought it clear that the Legislatures were incompetent to the proposed changes. These changes would make essential inroads on the State Constitutions, and it would be a novel & dangerous doctrine that a Legislature could change the constitution under which it held its existence. There might indeed be some Constitutions within the Union, which had given a power to the Legislature to concur in alterations of the federal Compact. But there were certainly some which had not; and in the case of these, a ratification must of necessity be obtained from the people. He considered the difference between a system founded on the Legislatures only, and one founded on the people, to be the true difference between a *league* or *treaty*, and a *Constitution*. The former in point of *moral obligation* might be as inviolable as the latter. In point of *political operation*, there were two important distinctions in favor of the latter. 1. A law violating a treaty ratified by a pre-existing law, might be respected by the Judges as a law, though an unwise or perfidious one. A law violating a constitution estab-

lished by the people themselves, would be considered by the Judges as null & void. 2. The doctrine laid down by the law of Nations in the case of treaties is that a breach of any one article by any of the parties, frees the other parties from their engagements. In the case of a union of people under one Constitution, the nature of the pact has always been understood to exclude such an interpretation. Comparing the two modes in point of expediency he thought all the considerations which recommended this Convention in preference to Congress for proposing the reform were in favor of State Conventions in preference to the Legislatures for examining and adopting it.

On question on Mr Elseworth's motion to refer the plan to the Legislatures of the States

N. H. no. Mass. no. C^t^ ay. P^a^ no. Del. ay. M^d^ ay. V^a^ no. N. C. no. S. C. no. Geo. no.

Mr Govr Morris moved that the reference of the plan be made to one general Convention, chosen & authorized by the people to consider, *amend*, & establish the same.—Not seconded.

On question for agreeing to Resolution 19. touching the mode of Ratification as reported from the Committee of the Whole; viz, to refer the Const^n^, after the approbation of Cong^s^ to assemblies chosen by the people;

N. H. ay. Mass. ay. C^t^ ay. P^a^ ay. Del. no. M^d^ ay. V^a^ ay. N. C. ay. S. C. ay. Geo. ay.

Mr Govr Morris & Mr King moved that the representation in the second branch consist of —— members from each State, who shall vote per capita.

Mr Elseworth said he had always approved of voting in that mode.

Mr Govr Morris moved to fill the *blank* with *three*. He wished the Senate to be a pretty numerous body. If two members only should be allowed to each State, and a majority be made a quorum, the power would be lodged in 14 members, which was too small a number for such a trust.

Mr Ghorum preferred two to three members for the blank. A small number was most convenient for deciding on peace & war &c. which he expected would be vested in the 2^d^ branch. The number of States will also increase. Kentucky, Vermont, the Province of Mayne & Franklin will probably soon be added to the present number. He presumed also that some of the largest States would be divided. The strength of the General Gov^t^ will lie not in the largeness, but in the smallness of the States.

Col. Mason thought 3 from each State including new States would make the 2^d^ branch too numerous. Besides other objections, the additional expence ought always to form one, where it was not absolutely necessary.

Mr Williamson. If the number be too great, the distant States will not be on an equal footing with the nearer States. The latter can more easily send & support their ablest Citizens. He approved of the voting per capita.

On the question for filling the blank with "*three*"

N. H. no. Mass. no. Con^t^ no. P^a^ ay. Del. no. V^a^ no. N. C. no. S. C. no. Geo. no.

On question for filling it with "two." Agreed to nem. con.

M^r L Martin was opposed to voting per Capita, as departing from the idea of the *States* being represented in the 2^d branch.

Mr Carroll,[1] was not struck with any particular objection ag^st the mode; but he did not wish so hastily to make so material an innovation.

On the question on the whole motion viz. the 2^d b. to consist of 2 members from each State and to vote per Capita,

N. H. ay. Mass. ay. C^t ay. P^a ay. Del. ay. M^d no. V^a ay. N. C. ay. S. C. ay. Geo. ay.

Mr Houston[2] & Mr Spaight moved "that the appointment of the Executive by Electors chosen by the Legislatures of the States, be reconsidered." Mr Houston urged the extreme inconveniency & the considerable expence, of drawing together men from all the States for the single purpose of electing the Chief Magistrate.

[1] "Mr. Carrol is a Man of large fortune, and influence in his State. He possesses plain good sense, and is in the full confidence of his Countrymen. This Gentleman is about years of age."—Pierce's Notes, *Am. Hist. Rev.*, iii., 330.

[2] "Mr. Houston is an Attorney at Law, and has been Member of Congress for the State of Georgia. He is a Gentleman of Family, and was educated in England. As to his legal or political knowledge he has very little to boast of. Nature seems to have done more for his corporeal than mental powers. His Person is striking, but his mind very little improved with useful or elegant knowledge. He has none of the talents requisite for the Orator, but in public debate is confused and irregular. Mr. Houston is about 30 years of age of an amiable and sweet temper, and of good and honorable principles."—Pierce's Notes, *Am. Hist. Rev.*, iii., 334.

On the question which was put without any debate

N. H. ay. Mass. ay. Ct. ay. Pa. no. Del. ay. Md. no. Virga. no. N. C. ay. S. C. ay. Geo. ay.

Ordered that tomorrow be assigned for the reconsideration, Con: & Pena. no—all the rest ay.

Mr. Gerry moved that the proceedings of the Convention for the establishment of a Natl. Govt. (except the part relating to the Executive), be referred to a Committee to prepare & report a Constitution conformable thereto.

Genl. Pinkney reminded the Convention that if the Committee should fail to insert some security to the Southern States agst. an emancipation of slaves, and taxes on exports, he shd. be bound by duty to his State to vote agst. their Report. The appt. of a Coma. as moved by Mr. Gerry. Agd. to nem. con.

Shall the Coma. consist of 10 members one from each State presn.—All the States were *no*, except Delaware, *ay*.

Shall it consist of 7. members

N. H. ay. Mas. ay. Ct. ay. Pa. no. Del. no. Md. ay. Va. no. N. C. no. S. C. ay. Geo. no. The question being lost by an equal division of Votes

It was agreed, nem-con- that the Committee consist of 5 members to be appointed tomorrow.

Adjourned

TUESDAY JULY 24. IN CONVENTION

The appointment of the Executive by Electors reconsidered.

Mr Houston moved that he be appointed by the "Nat^l^ Legislature," instead of "Electors appointed by the State Legislatures" according to the last decision of the mode. He dwelt chiefly on the improbability, that capable men would undertake the service of Electors from the more distant States.

Mr Spaight seconded the motion.

Mr Gerry opposed it. He thought there was no ground to apprehend the danger urged by Mr Houston. The election of the Executive Magistrate will be considered as of vast importance and will create great earnestness. The best men, the Governours of the States will not hold it derogatory from their character to be the electors. If the motion should be agreed to, it will be necessary to make the Executive ineligible a 2^d^ time, in order to render him independent of the Legislature; which was an idea extremely repugnant to his way of thinking.

Mr Strong supposed that there would be no necessity, if the Executive should be appointed by the Legislature, to make him ineligible a 2^d^ time; as new elections of the Legislature will have intervened; and he will not depend for his 2^d^ appointment on the same sett of men as his first was rec^d^ from. It had been suggested that *gratitude* for his past appointment w^d^ produce the same effect as dependence for his future appointment. He thought very differently. Besides this objection would lie ag^st^ the Electors who would be objects of gratitude as well as the Legislature. It was of great importance not to make the Gov^t^ too complex which would be the case if a

new sett of men like the Electors should be introduced into it. He thought also that the first characters in the States would not feel sufficient motives to undertake the office of Electors.

Mr. Williamson was for going back to the original ground; to elect the Executive for 7 years and render him ineligible a 2d. time. The proposed Electors would certainly not be men of the 1st. nor even of the 2d. grade in the States. These would all prefer a seat either in the Senate or the other branch of the Legislature. He did not like the Unity in the Executive. He had wished the Executive power to be lodged in three men taken from three districts into which the States should be divided. As the Executive is to have a kind of veto on the laws, and there is an essential difference of interests between the N. & S. States, particularly in the carrying trade, the power will be dangerous, if the Executive is to be taken from part of the Union, to the part from which he is not taken. The case is different here from what it is in England; where there is a sameness of interests throughout the Kingdom. Another objection agst. a single Magistrate is that he will be an elective King, and will feel the spirit of one. He will spare no pains to keep himself in for life, and will then lay a train for the succession of his children. It was pretty certain he thought that we should at some time or other have a King; but he wished no precaution to be omitted that might postpone the event as long as possible.—Ineligibility a 2d. time appeared to him to be the best precaution. With this pre-

caution he had no objection to a longer term than 7 years. He would go as far as 10 or 12 years.

Mr. Gerry moved that the Legislatures of the States should vote by ballot for the Executive in the same proportions as it had been proposed they should chuse electors; and that in case a majority of the votes should not centre on the same person, the 1st branch of the Natl. Legislature should chuse two out of the 4 candidates having most votes, and out of these two, the 2d branch should chuse the Executive.

Mr. King seconded the motion—and on the Question to postpone in order to take it into consideration. The *noes* were so predominant, that the States were not counted.

Question on Mr. Houston's motion that the Executive be appd. by the Natl. Legislature.

N. H. ay. Mass. ay. Ct. no. N. J. ay. Pa. no. Del. ay. Md. no. Va. no. N. C. ay. S. C. ay. Geo. ay.

Mr. L. Martin & Mr. Gerry moved to re-instate the ineligibility of the Executive a 2d time.

Mr. Elseworth. With many this appears a natural consequence of his being elected by the Legislature. It was not the case with him. The Executive he thought should be reelected if his conduct proved him worthy of it. And he will be more likely to render himself, worthy of it if he be rewardable with it. The most eminent characters also, will be more willing to accept the trust under this condition, than if they foresee a necessary degradation at a fixt period.

Mr Gerry. That the Executive sh^d^ be independent of the Legislature is a clear point. The longer the duration of his appointment the more will his dependence be diminished. It will be better then for him to continue 10. 15. or even 20. years and be ineligible afterwards.

Mr King was for making him re-eligible. This is too great an advantage to be given up for the small effect it will have on his dependence, if impeachments are to lie. He considered these as rendering the tenure during pleasure.

M^r^ L Martin, suspending his motion as to the ineligibility, moved "that the appointm^t^ of the Executive shall continue for Eleven years.

Mr Gerry suggested fifteen years.

Mr King twenty years. This is the medium life of princes.[1]

Mr Davie eight years

Mr Wilson. The difficulties & perplexities into which the House is thrown proceed from the election by the Legislature which he was sorry had been reinstated. The inconveniency of this mode was such that he would agree to almost any length of time in order to get rid of the dependence which must result from it. He was persuaded that the longest term would not be equivalent to a proper mode of election, unless indeed it should be during good behaviour. It seemed to be supposed that at a certain advance of life, a continuance in office would cease

[1] This might possibly be meant as a carricature of the previous motions in order to defeat the object of them.—Madison's Note.

to be agreeable to the officer, as well as desirable to the public. Experience had shewn in a variety of instances that both a capacity & inclination for public service existed in very advanced stages. He mentioned the instance of a Doge of Venice who was elected after he was 80 years of age. The Popes have generally been elected at very advanced periods, and yet in no case had a more steady or a better concerted policy been pursued than in the Court of Rome. If the Executive should come into office at 35 years of age, which he presumes may happen & his continuance should be fixt at 15 years, at the age of 50. in the very prime of life, and with all the aid of experience, he must be cast aside like a useless hulk. What an irreparable loss would the British Jurisprudence have sustained, had the age of 50. been fixt there as the ultimate limit of capacity or readiness to serve the public. The great luminary (L.d Mansfield) held his seat for thirty years after his arrival at that age. Notwithstanding what had been done he could not but hope that a better mode of election would yet be adopted; and one that would be more agreeable to the general sense of the House. That time might be given for further deliberation he w.d move that the present question be postponed till tomorrow.

M.r Broom seconded the motion to postpone.

M.r Gerry. We seem to be entirely at a loss on this head. He would suggest whether it would not be advisable to refer the clause relating to the Executive to the Committee of detail to be appointed.

Perhaps they will be able to hit on something that may unite the various opinions which have been thrown out.

Mr Wilson. As the great difficulty seems to spring from the mode of election, he wd suggest a mode which had not been mentioned. It was that the Executive be elected for 6 years by a small number, not more than 15 of the Natl Legislature, to be drawn from it, not by ballot, but by lot and who should retire immediately and make the election without separating. By this mode intrigue would be avoided in the first instance, and the dependence would be diminished. This was not he said a digested idea and might be liable to strong objections.

Mr Govr Morris. Of all possible modes of appointment that by the Legislature is the worst. If the Legislature is to appoint, and to impeach or to influence the impeachment, the Executive will be the mere creature of it. He had been opposed to the impeachment but was now convinced that impeachments must be provided for, if the appt was to be of any duration. No man wd say, that an Executive known to be in the pay of an Enemy, should not be removable in some way or other. He had been charged heretofore (by Col. Mason) with inconsistency in pleading for confidence in the Legislature on some occasions, & urging a distrust on others. The charge was not well founded. The Legislature is worthy of unbounded confidence in some respects, and liable to equal distrust in others. When their interest coincides precisely with that of their Con-

stituents, as happens in many of their Acts, no abuse of trust is to be apprehended. When a strong personal interest happens to be opposed to the general interest, the Legislature cannot be too much distrusted. In all public bodies there are two parties. The Executive will necessarily be more connected with one than with the other. There will be a personal interest therefore in one of the parties to oppose as well as in the other to support him. Much had been said of the intrigues, that will be practised by the Executive to get into office. Nothing had been said on the other side of the intrigues to get him out of office. Some leader of a party will always covet his seat, will perplex his administration, will cabal with the Legislature, till he succeeds in supplanting him. This was the way in which the King of England was got out, he meant the real King, the Minister. This was the way in which Pitt (L.d Chatham) forced himself into place. Fox was for pushing the matter still farther. If he had carried his India bill, which he was very near doing, he would have made the Minister, the King in form almost as well as in substance. Our President will be the British Minister, yet we are about to make him appointable by the Legislature. Something had been said of the danger of Monarchy. If a good government should not now be formed, if a good organization of the Executive should not be provided, he doubted whether we should not have something worse than a limited monarchy. In order to get rid of the dependence of the Executive on the

Legislature, the expedient of making him ineligible a 2d time had been devised. This was as much as to say we shd give him the benefit of experience, and then deprive ourselves of the use of it. But make him ineligible a 2d time—and prolong his duration even to 15 years, will he by any wonderful interposition of providence at that period cease to be a man? No he will be unwilling to quit his exaltation, the road to his object thro' the Constitution will be shut; he will be in possession of the sword, a civil war will ensue, and the Comander of the victorious army on which ever side, will be the despot of America. This consideration renders him particularly anxious that the Executive should be properly constituted. The vice here would not, as in some other parts of the system be curable. It is the most difficult of all rightly to balance the Executive. Make him too weak: The Legislature will usurp his powers. Make him too strong. He will usurp on the Legislature. He preferred a short period, a re-eligibility, but a different mode of election. A long period would prevent an adoption of the plan: it ought to do so. He shd himself be afraid to trust it. He was not prepared to decide on Mr Wilson's mode of election just hinted by him. He thought it deserved consideration It would be better that chance shd decide than intrigue.

On a question to postpone the consideration of the Resolution on the subject of the Executive

N. H. no. Mass. no. Ct ay. N. J. no. Pa ay. Del. divd Md ay. Va ay. N. C. no. S. C. no. Geo. no.

Mr Wilson then moved that the Executive be chosen every —— years by ——. Electors to be taken by lot from the Natl Legislature who shall proceed immediately to the choice of the Executive and not separate until it be made."

Mr Carrol 2ds the motion

Mr Gerry. this is committing too much to chance. If the lot should fall on a sett of unworthy men, an unworthy Executive must be saddled on the Country. He thought it had been demonstrated that no possible mode of electing by the Legislature could be a good one.

Mr King. The lot might fall on a majority from the same State which wd ensure the election of a man from that State. We ought to be governed by reason, not by chance. As nobody seemed to be satisfied, he wished the matter to be postponed

Mr Wilson did not move this as the best mode. His opinion remained unshaken that we ought to resort to the people for the election. He seconded the postponement.

Mr Govr Morris observed that the chances were almost infinite agst a majority of Electors from the same State.

On a question whether the last motion was in order, it was determined in the affirmative: 7. ays. 4 noes.

On the question of postponemt it was agreed to nem. con.

Mr Carrol took occasion to observe that he considered the clause declaring that direct taxation on

the States should be in proportion to representation, previous to the obtaining an actual census, as very objectionable, and that he reserved to himself the right of opposing it, if the Report of the Committee of detail should leave it in the plan.

Mr Govr Morris hoped the Committee would strike out the whole of the clause proportioning direct taxation to representation. He had only meant it as a bridge[1] to assist us over a certain gulph; having passed the gulph the bridge may be removed. He thought the principle laid down with so much strictness, liable to strong objections

On a ballot for a Committee to report a Constitution conformable to the Resolutions passed by the Convention, the members chosen were

Mr Rutlidge, Mr Randolph, Mr Ghorum, Mr Elseworth, Mr Wilson—

On motion to discharge the Com^e^ of the whole from the propositions submitted to the Convention by Mr C. Pinkney as the basis of a constitution, and to refer them to the Committee of detail just appointed, it was ag^d^ to nem: con

A like motion was then made & agreed to nem: con: with respect to the propositions of Mr Patterson.

Adjourned.

[1] The object was to lessen the eagerness on one side, & the opposition on the other, to the share of representation claimed by the S. States on account of the Negroes.—Madison's Note.

WEDNESDAY JULY 25. IN CONVENTION

Clause relating to the Executive being again under consideration [1]

M[r] Elseworth moved "that the Executive be appointed by the Legislature," except when the magistrate last chosen shall have continued in office the whole term for which he was chosen, & be reeligible, in which case the choice shall be by Electors appointed by the Legislatures of the States for that purpose. By this means a deserving magistrate may be reelected without making him dependent on the Legislature.

M[r] Gerry repeated his remark that an election at all by the Nat[l] Legislature was radically and incurably wrong; and moved that the Executive be appointed by the Governours & Presidents of the States, with advice of their Councils, and where there are no Councils by Electors chosen by the Legislatures. The executives to vote in the following proportions: viz —

M[r] Madison. There are objections ag[st] every mode that has been, or perhaps can be proposed. The election must be made either by some existing authority under the Nat[l] or State Constitutions—or by some special authority derived from the people—or by the

[1] "Permit me to hint, whether it would not be wise & seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the command in chief of the American army shall not be given to, nor devolve on, any but a natural *born* citizen."—John Jay to Washington, July 25, 1787 (Wash. MSS.).

people themselves.—The two Existing authorities under the Nat^l Constitution w^d be the Legislative & Judiciary. The latter he presumed was out of the question. The former was in his Judgment liable to insuperable objections. Besides the general influence of that mode on the independence of the Executive, 1. the election of the Chief Magistrate would agitate & divide the legislature so much that the public interest would materially suffer by it. Public bodies are always apt to be thrown into contentions, but into more violent ones by such occasions than by any others. 2. the candidate would intrigue with the Legislature, would derive his appointment from the predominant faction, and be apt to render his administration subservient to its views. 3. The Ministers of foreign powers would have and would make use of, the opportunity to mix their intrigues & influence with the Election. Limited as the powers of the Executive are, it will be an object of great moment with the great rival powers of Europe who have American possessions, to have at the head of our Governm^t a man attached to their respective politics & interests. No pains, nor perhaps expence, will be spared, to gain from the Legislature an appointm^t favorable to their wishes. Germany & Poland are witnesses of this danger. In the former, the election of the Head of the Empire, till it became in a manner hereditary, interested all Europe, and was much influenced by foreign interference. In the latter, altho' the elective Magistrate has very little real power, his election has at all times

produced the most eager interference of forign princes, and has in fact at length slid entirely into foreign hands. The existing authorities in the States are the Legislative, Executive & Judiciary. The appointment of the Nat^l^ Executive by the first was objectionable in many points of view, some of which had been already mentioned. He would mention one which of itself would decide his opinion. The Legislatures of the States had betrayed a strong propensity to a variety of pernicious measures. One object of the Nat^l^ Legisl^re^ was to controul this propensity. One object of the Nat^l^ Executive, so far as it would have a negative on the laws, was to controul the Nat^l^ Legislature so far as it might be infected with a similar propensity. Refer the appointm^t^ of the Nat^l^ Executive to the State Legislatures, and this controuling purpose may be defeated. The Legislatures can & will act with some kind of regular plan, and will promote the appointm^t^ of a man who will not oppose himself to a favorite object. Should a majority of the Legislatures at the time of election have the same object, or different objects of the same kind, The Nat^l^ Executive would be rendered subservient to them.—An appointment by the State Executives, was liable among other objections to this insuperable one, that being standing bodies, they could & would be courted, and intrigued with by the Candidates, by their partizans, and by the Ministers of foreign powers. The State Judiciary had not & he presumed w^d^ not be proposed as a proper source of appointment. The option before us then lay

between an appointment by Electors chosen by the people—and an immediate appointment by the people. He thought the former mode free from many of the objections which had been urged agᵗ it, and greatly preferable to an appointment by the Natˡ Legislature. As the electors would be chosen for the occasion, would meet at once, & proceed immediately to an appointment, there would be very little opportunity for cabal, or corruption. As a further precaution, it might be required that they should meet at some place, distinct from the seat of Govᵗ and even that no person within a certain distance of the place at the time shᵈ be eligible. This Mode however had been rejected so recently & by so great a majority that it probably would not be proposed anew. The remaining mode was an election by the people or rather by the qualified part of them, at large: With all its imperfections he liked this best. He would not repeat either the general argumᵗˢ for or the objections agᵗ this mode. He would only take notice of two difficulties which he admitted to have weight. The first arose from the disposition in the people to prefer a Citizen of their own State, and the disadvantage this wᵈ throw on the smaller States. Great as this objection might be he did not think it equal to such as lay agᵗ every other mode which had been proposed. He thought too that some expedient might be hit upon that would obviate it. The second difficulty arose from the disproportion of qualified voters in the N. & S. States, and the disadvantages which this mode would throw on the latter. The

answer to this objection was 1. that this disproportion would be continually decreasing under the influence of the Republican laws introduced in the S. States, and the more rapid increase of their population. 2. That local considerations must give way to the general interest. As an individual from the S. States, he was willing to make the sacrifice.

Mr Elseworth. The objection drawn from the different sizes of the States, is unanswerable. The Citizens of the largest States would invariably prefer the candidate within the State; and the largest States w^d^ invariably have the man.

Question on Mr Elseworth's motion as above.

N. H. ay. Mass. no. C^t^ ay. N. J. no. P^a^ ay. Del. no. M^d^ ay. V^a^ no. N. C. no. S. C. no. Geo. no.

Mr Pinkney moved that the election by the Legislature be qualified with a proviso that no person be eligible for more than 6 years in any twelve years. He thought this would have all the advantage & at the same time avoid in some degree the inconveniency, of an absolute ineligibility a 2^d^ time.

Col. Mason approved the idea. It had the sanction of experience in the instance of Cong^s^ and some of the Executives of the States. It rendered the Executive as effectually independent, as an ineligibility after his first election, and opened the way at the same time for the advantage of his future services. He preferred on the whole the election by the Nat^l^ Legislature: Tho' Candor obliged him to admit, that there was great danger of foreign influence,

as had been suggested. This was the most serious objection with him that had been urged.

Mr Butler. The two great evils to be avoided are cabal at home, & influence from abroad. It will be difficult to avoid either if the Election be made by the Nat^l^ Legislature. On the other hand. The Gov^t^ should not be made so complex & unwieldy as to disgust the States. This would be the case, if the election sh^d^ be referred to the people. He liked best an election by Electors chosen by the Legislatures of the States. He was ag^st^ a re-eligibility at all events. He was also ag^st^ a ratio of votes in the States. An equality should prevail in this case. The reasons for departing from it do not hold in the case of the Executive as in that of the Legislature.

Mr Gerry approved of Mr Pinkney's motion as lessening the evil.

Mr Govr Morris was ag^st^ a rotation in every case. It formed a political School, in wch we were always governed by the scholars, and not by the Masters. The evils to be guarded ag^st^ in this case are. 1. the undue influence of the Legislature. 2. instability of Councils. 3. misconduct in office. To guard ag^st^ the first, we run into the second evil. We adopt a rotation which produces instability of Councils. To avoid Sylla we fall into Charibdis. A change of men is ever followed by a change of measures We see this fully exemplified in the vicissitudes among ourselves, particularly in the State of Pen^a^ The self-sufficiency of a victorious party scorns to tread in the paths of their predecessors. Rehoboam will not

imitate Soloman. 2. the Rotation in office will not prevent intrigue and dependence on the Legislature. The man in office will look forward to the period at which he will become re-eligible. The distance of the period, the improbability of such a protraction of his life will be no obstacle. Such is the nature of man, formed by his benevolent author no doubt for wise ends, that altho' he knows his existence to be limited to a span, he takes his measures as if he were to live for ever. But taking another supposition, the inefficacy of the expedient will be manifest. If the magistrate does not look forward to his re-election to the Executive, he will be pretty sure to keep in view the opportunity of his going into the Legislature itself. He will have little objection then to an extension of power on a theatre where he expects to act a distinguished part; and will be very unwilling to take any step that may endanger his popularity with the Legislature, on his influence over which the figure he is to make will depend. 3. To avoid the third evil, impeachments will be essential. And hence an additional reason agst an election by the Legislature. He considered an election by the people as the best, by the Legislature as the worst, mode. Putting both these aside, he could not but favor the idea of Mr Wilson, of introducing a mixture of lot. It will diminish, if not destroy both cabal & dependence.

Mr Williamson was sensible that strong objections lay agst an election of the Executive by the Legislature, and that it opened a door for foreign influence.

The principal objection agᵗ an election by the people seemed to be, the disadvantage under which it would place the smaller States. He suggested as a cure for this difficulty, that each man should vote for 3 candidates, one of them he observed would be probably of his own State, the other 2. of some other States; and as probably of a small as a large one.

Mʳ Govʳ Morris liked the idea, suggesting as an amendment that each man should vote for two persons one of whom at least should not be of his own State.

Mʳ Madison also thought something valuable might be made of the suggestion with the proposed amendment of it. The second best man in this case would probably be the first, in fact. The only objection which occurred was that each Citizen after havᵍ given his vote for his favorite fellow Citizen, wᵈ throw away his second on some obscure Citizen of another State, in order to ensure the object of his first choice. But it could hardly be supposed that the Citizens of many States would be so sanguine of having their favorite elected, as not to give their second vote with sincerity to the next object of their choice. It might moreover be provided in favor of the smaller States that the Executive should not be eligible more than —— times in —— years from the same State.

Mʳ Gerry. A popular election in this case is radically vicious. The ignorance of the people would put it in the power of some one set of men dispersed through the Union & acting in Concert to delude

them into any appointment. He observed that such a Society of men existed in the Order of the Cincinnati. They are respectable, united, and influential. They will in fact elect the chief Magistrate in every instance, if the election be referred to the people. His respect for the characters composing this Society could not blind him to the danger & impropriety of throwing such a power into their hands.

Mr Dickinson. As far as he could judge from the discussions which had taken place during his attendance, insuperable objections lay ag^st^ an election of the Executive by the Nat^l^ Legislature; as also by the Legislatures or Executives of the States. He had long leaned towards an election by the people which he regarded as the best & purest source. Objections he was aware lay ag^st^ this mode, but not so great he thought as ag^st^ the other modes. The greatest difficulty in the opinion of the House seemed to arise from the partiality of the States to their respective Citizens. But might not this very partiality be turned to a useful purpose. Let the people of each State chuse its best Citizen. The people will know the most eminent characters of their own States, and the people of different States will feel an emulation in selecting those of which they will have the greatest reason to be proud. Out of the thirteen names thus selected, an Executive Magistrate may be chosen either by the Nat^l^ Legislature, or by Electors appointed by it.

On a Question which was moved for postponing Mr Pinkney's motion, in order to make way for some

such proposition as had been hinted by Mr. Williamson & others, it passed in the negative.

N. H. no. Mass. no. Ct. ay. N. J. ay. Pa. ay. Del. no. Md ay. Va. ay. N. C. no. S. C. no. Geo. no.

On Mr. Pinkney's motion that no person shall serve in the Executive more than 6 years in 12. years, it passed in the negative.

N. H. ay. Mass. ay. Ct. no. N. J. no. Pa. no. Del. no. Md. no. Va. no. N. C. ay. S. C. ay. Geo. ay.

On a motion that the members of the Committee be furnished with copies of the proceedings it was so determined; S. Carolina alone being in the negative.

It was then moved that the members of the House might take copies of the Resolutions which had been agreed to; which passed in the negative.

N. H. no. Mas. no. Con. ay. N. J. ay. Pa. no. Del. ay. Maryd. no. Va. ay. N. C. ay. S. C. no— Geo. no.

Mr. Gerry & Mr. Butler moved to refer the resolution relating to the Executive (except the clause making it consist of a single person) to the Committee of detail

Mr. Wilson hoped that so important a branch of the System wd. not be committed untill a general principle shd. be fixed by a vote of the House.

Mr. Langdon. was for the commitment—Adjd.

THURSDAY JULY. 26. IN CONVENTION.[1]

Col. Mason. In every stage of the Question relative to the Executive, the difficulty of the subject and the diversity of the opinions concerning it have appeared. Nor have any of the modes of constituting that department been satisfactory. 1. It has been proposed that the election should be made by the people at large; that is that an act which ought to be performed by those who know most of Eminent characters, & qualifications, should be performed by those who know least. 2. that the election should be made by the Legislatures of the States. 3. by the Executives of the States. Agst these modes also strong objections have been urged. 4. It has been proposed that the election should be made by Electors chosen by the people for that purpose. This was at first agreed to: But on further consideration has been rejected. 5. Since which, the mode of Mr Williamson, requiring each freeholder to vote for several candidates has been proposed. This seemed like many other propositions, to carry a plausible face, but on closer inspection is liable to

[1] "The affairs of the federal government are, I believe, in the utmost confusion: The convention is an expedient that will produce a decisive effect. It will either recover us from our present embarrassments or complete our ruin; for I do suspect that if what they recommend sho^{d} be rejected this wo^{d} be the case. But I trust that the presence of Genl Washington will have great weight in the body itself so as to overawe & keep under the demon of party, & that the signature of his name to whatever act shall be the result of their deliberations will secure its passage thro' the union."—Monroe to Jefferson, July 27, 1787 (*Writings of Monroe*, i., 173).

fatal objections. A popular election in any form, as Mr. Gerry has observed, would throw the appointment into the hands of the Cincinnati, a Society for the members of which he had a great respect, but which he never wished to have a preponderating influence in the Govt. 6. Another expedient was proposed by Mr. Dickinson, which is liable to so palpable & material an inconvenience that he had little doubt of its being by this time rejected by himself. It would exclude every man who happened not to be popular within his own State; tho' the causes of his local unpopularity might be of such a nature as to recommend him to the States at large. 7. Among other expedients, a lottery has been introduced. But as the tickets do not appear to be in much demand, it will probably, not be carried on, and nothing therefore need be said on that subject. After reviewing all these various modes, he was led to conclude, that an election by the Natl. Legislature as originally proposed, was the best. If it was liable to objections, it was liable to fewer than any other. He conceived at the same time that a second election ought to be absolutely prohibited. Having for his primary object for the pole-star of his political conduct, the preservation of the rights of the people, he held it as an essential point, as the very palladium of civil liberty, that the Great officers of State, and particularly the Executive should at fixed periods return to that mass from which they were at first taken, in order that they may feel & respect those rights & interests, Which are again to be personally valuable to

them. He concluded with moving that the constitution of the Executive as reported by the Com^e^ of the whole be reinstated, viz. "that the Executive be appointed for seven years, & be ineligible a 2^d^ time."

Mr Davie seconded the motion

Doc^r^ Franklin. It seems to have been imagined by some that the returning to the mass of the people was degrading the magistrate. This he thought was contrary to republican principles. In free Governments the rulers are the servants, and the people their superiors & sovereigns. For the former therefore to return among the latter was not to *degrade* but to *promote* them. And it would be imposing an unreasonable burden on them, to keep them always in a State of servitude, and not allow them to become again one of the Masters.

Question on Col. Masons motion as above; which passed in the affirmative

N. H. ay. Mass^ts^ not on floor. C^t^ no. N. J. ay. P^a^ no. Del. no. M^d^ ay. V^a^ ay. N. C. ay. S. C. ay. Geo. ay.

Mr Govr Morris was now ag^st^ the whole paragraph. In answer to Col. Mason's position that a periodical return of the great officers of the State into the mass of the people, was the palladium of Civil liberty he w^d^ observe that on the same principle the Judiciary ought to be periodically degraded; certain it was that the Legislature ought on every principle, yet no one had proposed, or conceived that the members of it should not be re-eligible. In answer to Doc^r^ Franklin, that a return into the mass of the people

would be a promotion, instead of a degradation, he had no doubt that our Executive like most others would have too much patriotism to shrink from the burthen of his office, and too much modesty not to be willing to decline the promotion.

On the question on the whole resolution as amended in the words following—"that a National Executive be instituted—to consist of a single person—to be chosen by the Nat^{l} legislature—for the term of seven years—to be ineligible a 2^{d} time—with power to carry into execution the nat^{l} laws—to appoint to offices in cases not otherwise provided for—to be removable on impeachment & conviction of mal-practice or neglect of duty—to receive a fixt compensation for the devotion of his time to the public service, to be paid out of the Nat^{l} treasury"—it passed in the affirmative

N. H. ay. Mass. not on floor. C^{t} ay. N. J. ay. P^{a} no. Del. no. M^{d} no. V^{a} div^{d} Mr Blair & Col. Mason ay. Genl Washington & Mr Madison no. Mr Randolph happened to be out of the House. N. C. ay. S. C. ay. Geo. ay.

Mr Mason moved "that the Committee of detail be instructed to receive a clause requiring certain qualifications of landed property & citizenship of the U. States, in members of the Legislature, and disqualifying persons having unsettled Acc^{ts} with or being indebted to the U. S., from being members of the Nat^{l} Legislature."—He observed that persons of the latter descriptions had frequently got into the State Legislatures, in order to promote laws that might

shelter their delinquencies; and that this evil had crept into Cong[s] if Report was to be regarded.

M[r] Pinckney seconded the motion

M[r] Gov[r] Morris. If qualifications are proper, he w[d] prefer them in the electors rather than the elected. As to debtors of the U. S. they are but few. As to persons having unsettled accounts he believed them to be pretty many. He thought however that such a discrimination would be both odious & useless, and in many instances, unjust & cruel. The delay of settlem[t] had been more the fault of the Public than of the individuals. What will be done with those patriotic Citizens who have lent money, or services or property to their Country, without having been yet able to obtain a liquidation of their claims? Are they to be excluded?

M[r] Ghorum was for leaving to the Legislature the providing ag[st] such abuses as had been mentioned.

Col. Mason mentioned the parliamentary qualifications adopted in the Reign of Queen Anne, which he said had met with universal approbation.

M[r] Madison had witnessed the zeal of men having acc[ts] with the public, to get into the Legislatures for sinister purposes. He thought however that if any precaution were taken for excluding them, the one proposed by Col. Mason ought to be new modelled. It might be well to limit the exclusion to persons who had rec[d] money from the public, and had not accounted for it.

M[r] Gov[r] Morris. It was a precept of great antiquity as well as of high authority that we should

not be righteous overmuch. He thought we ought to be equally on our guard agst being wise overmuch. The proposed regulation would enable the Govern^{t} to exclude particular persons from office as long as they pleased. He mentioned the case of the Comander in Chief's presenting his account for secret services, which he said was so moderate that every one was astonished at it; and so simple that no doubt could arise on it. Yet had the Auditor been disposed to delay the settlement, how easily he might have effected it, & how cruel w^{d} it be in such a case to keep a distinguished & meritorious Citizen under a temporary disability & disfranchisement. He mentioned this case merely to illustrate the objectionable nature of the proposition. He was opposed to such minutious regulations in a Constitution. The parliamentary qualifications quoted by Col. Mason, had been disregarded in practice; and was but a scheme of the landed agst the monied interest.

Mr Pinckney & Genl Pinckney moved to insert by way of amendm^{t} the words Judiciary & Executive so as to extend the qualifications to those departments which was agreed to nem con.

Mr Gerry thought the inconveniency of excluding a few worthy individuals who might be public debtors or have unsettled acc^{ts} ought not to be put in the scale agst the public advantages of the regulation, and that the motion did not go far enough.

Mr King observed that there might be great danger in requiring landed property as a qualification since it would exclude the monied interest,

whose aids may be essential in particular emergencies to the public safety.

Mr Dickinson, was ag^st^ any recital of qualifications in the Constitution. It was impossible to make a compleat one, and a partial one w^d^ by implication tie up the hands of the Legislature from supplying the omissions. The best defence lay in the freeholders who were to elect the Legislature. Whilst this Source should remain pure, the Public interest would be safe. If it ever should be corrupt, no little expedients would repel the danger. He doubted the policy of interweaving into a Republican constitution a veneration for wealth. He had always understood that a veneration for poverty & virtue, were the objects of republican encouragement. It seemed improper that any man of merit should be subjected to disabilities in a Republic where merit was understood to form the great title to public trust, honors & rewards.

Mr Gerry if property be one object of Government, provisions to secure it cannot be improper.

Mr Madison moved to strike out the word *landed*, before the word "qualifications." If the proposition s^d^ be agreed to he wished the Committee to be at liberty to report the best criterion they could devise. Landed possessions were no certain evidence of real wealth. Many enjoyed them to a great extent who were more in debt than they were worth. The unjust Laws of the States had proceeded more from this class of men, than any others. It had often happened that men who had acquired landed property

on credit, got into the Legislatures with a view of promoting an unjust protection ag^st their Creditors. In the next place, if a small quantity of land should be made the standard, it would be no security; if a large one, it would exclude the proper representatives of those classes of Citizens who were not landholders. It was politic as well as just that the interests & rights of every class should be duly represented & understood in the public Councils. It was a provision every where established that the Country should be divided into districts & representatives taken from each, in order that the Legislative Assembly might equally understand & sympathize with the rights of the people in every part of the Community. It was not less proper that every class of Citizens should have an opportunity of making their rights be felt & understood in the public Councils. The three principal classes into which our citizens were divisible, were the landed the commercial & the manufacturing. The 2^d & 3^d class, bear as yet a small proportion to the first. The proportion however will daily increase. We see in the populous Countries in Europe now what we shall be hereafter. These classes understand much less of each others interests & affairs, than men of the same class inhabiting different districts. It is particularly requisite therefore that the interests of one or two of them should not be left entirely to the care, or impartiality of the third. This must be the case if landed qualifications should be required, few of the mercantile, & scarcely any of the manufacturing class chusing

whilst they continue in business to turn any part of their Stock into landed property. For these reasons he wished if it were possible that some other criterion than the mere possession of land should be devised. He concurred with Mr. Govr. Morris in thinking that qualifications in the Electors would be much more effectual than in the elected. The former would discriminate between real & ostensible property in the latter; But he was aware of the difficulty of forming any uniform standard that would suit the different circumstances & opinions prevailing in the different States.

Mr. Govr. Morris 2ded the motion.

On the Question for striking out "landed"

N. H. ay. Mass. ay. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. ay.

On Question on 1st part of Col. Masons proposition as to qualification of property & citizenship," as so amended

N. H. ay. Masts. ay. Ct. no. N. J. ay. Pa. no. Del. no. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

"The 2d part, for disqualifying debtors, and persons having unsettled accounts," being under consideration

Mr. Carrol moved to strike out "having unsettled accounts"

Mr. Ghorum seconded the motion; observing that it would put the commercial & manufacturing part of the people on a worse footing than others as they

would be most likely to have dealings with the public.

Mr L. Martin. if these words should be struck out, and the remaining words concerning debtors retained, it will be the interest of the latter class to keep their accounts unsettled as long as possible.

Mr Wilson was for striking them out. They put too much power in the hands of the Auditors, who might combine with rivals in delaying settlements in order to prolong the disqualifications of particular men. We should consider that we are providing a Constitution for future generations, and not merely for the peculiar circumstances of the moment. The time has been, and will again be, when the public safety may depend on the voluntary aids of individuals which will necessarily open accts with the public, and when such accts will be a characteristic of patriotism. Besides a partial enumeration of cases will disable the Legislature from disqualifying odious & dangerous characters.

Mr Langdon [1] was for striking out the whole clause for the reasons given by Mr Wilson. So many exclusions he thought too would render the system unacceptable to the people.

Mr Gerry. If the argumts used today were to prevail, we might have a Legislature composed of Public debtors, pensioners, placemen & contractors. He thought the proposed qualifications would be pleas-

[1] "Mr Langdon is a man of considerable fortune, possesses a liberal mind, and a good plain understanding—about 40 years old."—Pierce's Notes, *Am. Hist. Rev.*, iii., 325.

ing to the people. They will be considered as a security agst unnecessary or undue burdens being imposed on them. He moved to add "pensioners" to the disqualified characters which was negatived.

N. H. no. Mas. ay. Con. no. N. J. no. P^{a} no. Del. no. Mary^{d} ay. V^{a} no. N. C. divided. S. C. no. Geo. ay.

Mr Govr Morris. The last clause, relating to public debtors will exclude every importing merchant. Revenue will be drawn it is foreseen as much as possible, from trade. Duties of course will be bonded, and the Merch^{ts} will remain debtors to the public. He repeated that it had not been so much the fault of individuals as of the public that transactions between them had not been more generally liquidated & adjusted. At all events to draw from our short & scanty experience rules that are to operate through succeeding ages, does not savour much of real wisdom.

On question for striking out, "persons having unsettled accounts with the U. States."

N. H. ay. Mass. ay. C^{t} ay. N. J. no. P^{a} ay. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. no.

Mr Elseworth was for disagreeing to the remainder of the clause disqualifying Public debtors; and for leaving to the wisdom of the Legislature and the virtue of the Citizens, the task of providing agst such evils. Is the smallest as well as the largest debtor to be excluded? Then every arrear of taxes will disqualify. Besides how is it to be known to the people when they elect who are or are not public

debtors. The exclusion of pensioners & placemen in Engl^d^ is founded on a consideration not existing here. As persons of that sort are dependent on the Crown, they tend to increase its influence.

Mr Pinkney s^d^ he was at first a friend to the proposition, for the sake of the clause relating to qualifications of property; but he disliked the exclusion of public debtors; it went too far. It w^d^ exclude persons who had purchased confiscated property or should purchase Western territory of the public, and might be some obstacle to the sale of the latter.

On the question for agreeing to the clause disqualifying public debtors

N. H. no. Mass. no. C^t^ no. N. J. no. P^a^ no. Del. no. M^d^ no. V^a^ no. N. C. ay. S. C. no. Geo. ay.

Col. Mason, observed that it would be proper, as he thought, that some provision should be made in the Constitution ag^st^ choosing for the Seat of the Genl Gov^t^ the City or place at which the Seat of any State Gov^t^ might be fixt. There were 2 objections ag^st^ having them at the same place, which without mentioning others, required some precaution on the subject. The 1st was that it tended to produce disputes concerning jurisdiction. The 2^d^ & principal one was that the intermixture of the two Legislatures tended to give a provincial tincture to ye Nat^l^ deliberations. He moved that the Com^e^ be instructed to receive a clause to prevent the seat of the Nat^l^ Gov^t^ being in the same City or town with the Seat of the Gov^t^ of any State longer than untill the necessary public buildings could be erected.

Mr Alex. Martin 2^ded^ the motion.

Mr Govr Morris did not dislike the idea, but was apprehensive that such a clause might make enemies of Philad^a^ & N. York which had expectations of becoming the Seat of the Genl Gov^t^

Mr Langdon approved the idea also: but suggested the case of a State moving its seat of Gov^t^ to the nat^l^ Seat after the erection of the Public buildings.

Mr Ghorum. The precaution may be evaded by the Nat^l^ Legisl^re^ by delaying to erect the Public buildings.

Mr Gerry conceived it to be the gen^l^ sense of America, that neither the Seat of a State Gov^t^ nor any large commercial City should be the seat of the Genl Gov^t^

Mr Williamson liked the idea, but knowing how much the passions of men were agitated by this matter, was apprehensive of turning them ag^st^ the System. He apprehended also that an evasion, might be practised in the way hinted by Mr Ghorum.

Mr Pinkney thought the Seat of a State Gov^t^ ought to be avoided; but that a large town or its vicinity would be proper for the Seat of the Genl Gov^t^

Col. Mason did not mean to press the motion at this time, nor to excite any hostile passions ag^st^ the system. He was content to withdraw the motion for the present.

Mr Butler was for fixing by the Constitution the place, & a central one, for the seat of the Nat^l^ Gov^t^

The proceedings since Monday last were referred unanimously to the Com^e^ of detail, and the Convention then unanimously adjourned till Monday, Aug^st^ 6. that the Com^e^ of detail might have time to prepare & report the Constitution. The whole proceedings as referred are as follow [1]:

June 20. I. RESOLVED, That the Government of the United States ought to consist of a supreme legislative, judiciary, and executive.

June 21. II. RESOLVED, That the legislature consist of two branches.

III. RESOLVED, That the members of the first branch of the legislature ought to be elected by the people of the several states, for the term of two years; to be

June 22. paid out of the publick treasury; to receive an adequate compensation for their services; to be of the age of twenty-five

June 23. years at least; to be ineligible and incapable of holding any office under the authority of the United States (except those peculiarly belonging to the

[1] Madison's note says: "here copy them from the Journal p.207." In the *Journal* they are given as having been "collected from the proceedings of the convention, as they are spread over the journal from June 19th to July 26th"—*Journal of Federal Convention*, 207. The dates show when the resolutions were agreed to, and are correct.

functions of the first branch) during the term of service of the first branch.

June 25. IV. RESOLVED, That the members of the second branch of the legislature of the United States ought to be chosen by the individual legislatures; to be of

June 26. the age of thirty years at least; to hold their offices for six years, one third to go out biennally; to receive a compensation for the devotion of their time to the publick service; to be ineligible to and incapable of holding any office, under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term for which they are elected, and for one year thereafter.

V. RESOLVED, That each branch ought to possess the right of originating acts.

VI. RESOLVED, That the national legislature ought to possess the

Postponed 27. legislative rights vested in Con-

July 16. gress by the confederation; and

July 17. moreover, to legislate in all cases for the general interests

of the union, and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

VII. RESOLVED, That the legislative acts of the United States, made by virtue and in pursuance of the articles of union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states,

July 17 or their citizens and inhabitants; and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual States to the contrary, notwithstanding.

July 16. VIII. RESOLVED, That in the original formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members; of which number

New Hampshire shall send	three,
Massachusetts	eight,
Rhode Island	one,
Connecticut	five,
New York	six,
New Jersey	four,
Pennsylvania	eight,
Delaware	one,
Maryland	six,
Virginia	ten,
North Carolina	five,
South Carolina	five,
Georgia	three.

But as the present situation of the states may probably alter in the number of their inhabitants, the legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the states shall hereafter be divided, or enlarged by addition of territory, or any two or more states united, or any new states created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representa-

tives, in any of the foregoing cases, upon the principle of their number of inhabitants according to the provisions hereafter mentioned, namely—Provided always, that representation ought to be proportioned to direct taxation. And in order to ascertain the alteration in the direct taxation, which may be required from time to time by the changes in the relative circumstances of the states—

IX. RESOLVED, That a census be taken within six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of April 18, 1783; and that the legislature of the United States shall proportion the direct taxation accordingly.

X. RESOLVED, That all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of

the United States, shall originate in the first branch of the legislature of the United States, and shall not be altered or amended by the second branch; and that no money shall be drawn from the publick treasury, but in pursuance of appropriations to be originated by the first branch.

XI. RESOLVED, That in the second branch of the legislature of the United States, each state shall have an equal vote.

July 26. XII. RESOLVED, That a national executive be instituted, to consist of a single person; to be chosen by the national legislature, for the term of seven years; to be ineligible a second time; with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be removable on impeachment, and conviction of mal-practice or neglect or duty; to receive a fixed compensation for the devotion of his time to the publick service; to be paid out of the publick treasury.

July 21. XIII. RESOLVED, That the national executive shall have a right to negative any legislative act, which shall not be afterwards passed, unless by two third parts of each branch of the national legislature.

July 18. XIV. RESOLVED, That a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be

July 21. appointed by the second branch of the national legislature; to

July 18. hold their offices during good behaviour; to receive punctually, at stated times, a fixed compensation for their services, in which no diminution shall be made, so as to affect the persons actually in office at the time of such diminution.

XV. RESOLVED, That the national legislature be empowered to appoint inferior tribunals.

XVI. RESOLVED, That the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general legislature; and to such other questions as involve the national peace and harmony.

XVII. RESOLVED, That provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

XVIII. RESOLVED, That a republican form of government shall be guarantied to each state; and that each state shall be protected against foreign and domestick violence.

July 23. XIX. RESOLVED, That provision ought to be made for the amendment of the articles of union, whensoever it shall seem necessary.

XX. RESOLVED, That the legislative, executive, and judiciary powers within the several states, and of the national government, ought to be bound, by oath, to support the articles of union.

XXI. RESOLVED, That the amendments which shall be offered to the confederation by the convention ought, at a proper time or times after the approbation of

Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.

XXII. RESOLVED, That the representation in the second branch of the legislature of the United States consist of two members from each state, who shall vote per capita.

July 26. XXIII. RESOLVED, That it be an instruction to the committee, to whom were referred the proceedings of the convention for the establishment of a national government, to receive a clause or clauses, requiring certain qualifications of property and citizenship, in the United States, for the executive, the judiciary, and the members of both branches of the legislature of the United States.

With the above resolutions were referred the propositions offered by Mr. C. Pinckney on the 29th of May, & by Mr. Patterson on the 15th of June.[1]

[1] "Aug 1. 1787 WILLIAMSB.

"DEAR COL.

"We are here & I believe every where all Impatience to know something of your conventional Deliberations. If you cannot tell us what

MONDAY AUGUST 6TH IN CONVENTION

Mr John Francis Mercer from Maryland took his seat.

Mr Rutlidge delivered in the Report of the Com-

you are doing, you might at least give us some Information of what you are not doing. This wd afford food for political conjecture, and perhaps be sufficient to satisfy present Impatience. I hope you have already discovered the means of preserving the American Empire united—& that the scheme of a Disunion has been found pregnant with ye greatest Evils—But we are not at this distance able to judge with any accuracy upon subjects so truly important & interesting as those wch must engage you at present—We can only hope, that you will all resemble Cæsar, at least in one particular: 'nil actum reputans si quid superesset agendum';—& that your Exertions will be commensurate to yr great Expectations wch have been formed. . . .

"J. MADISON." *

* President of William and Mary College, and the first Bishop of the Episcopal Church in Virginia. He was a second cousin of James Madison, of Orange.

(Mad. MSS.)

"RICHMOND Augt 5. 87.

"DEAR SIR,

"I am much obliged to you for your communication of the proceedings of ye Convention, since I left them; for I feel that anxiety about ye result, which it's Importance must give to every honest citizen. If I thought that my return could contribute in the smallest degree to it's Improvement, nothing should Keep me away. But as I know that the talents, knowledge, & well-established character, of our present delegates have justly inspired the country with ye most entire confidence in their determinations; & that my vote could only *operate* to produce a division, & so destroy ye vote of ye State, I think that my attendance now would certainly be useless, perhaps injurious.

"I am credibly inform'd that Mr Henry has openly express'd his disapprobation of the circular letter of Congress, respecting ye payment of British debts; & that he has declared his opinion that ye Interests of this state cannot safely be trusted with that body. The doctrine of three confederacies, or great Republics, has its advocates here. I have heard Hervie support it, along with ye extinction of State Legislatures within each great Department. The necessity of some independent power to controul the Assembly by a negative,

mittee of detail as follows: a printed copy being at the same time furnished to each member [1]:

"We the people of the States of New Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia North-Carolina, South-Carolina, and Georgia, do ordain, declare, and establish the following Constitution for the Government of Ourselves and our Posterity.

seems now to be admitted by ye most zealous republicans—they only differ about ye mode of constituting such a power. B. Randolph seems to think that a magistrate annually elected by ye people might exercise such a controul as independently as ye King of G. B. I hope that our representative, Marshall, will be a powerful aid to Mason in the next Assembly. He has observ'd the actual depravation of mens manners, under ye corrupting Influence of our Legislature; and is convinc'd that nothing but ye adoption of some efficient plan from ye Convention can prevent anarchy first, & civil convulsions afterwards. M^r^ H——y has certainly converted a majority of Prince Edward, formerly ye most averse to paper money, to ye patronage of it. . . .

"Your friend & humble serv^t^

"JAMES MCCLURG."

(Mad. MSS.)

[1] Madison's printed copy is marked: "As Reported by Com^e^ of Detail viz of five. Aug. 6. 1787." It is a large folio of seven pages. In the enumeration of the Articles by a misprint VI. was repeated, and the alterations in Article VII. and succeeding articles were made by Madison. In Sect. 11 of Article VI., as it was printed, it appeared: "The enacting stile of the laws of the United States shall be. 'Be it enacted and it is hereby enacted by the House of Representatives, and by the Senate of the United States, in Congress assembled,'" which Madison altered to read: "The enacting stile of the laws of the United States shall be. 'Be it enacted by the Senate & representatives, in Congress assembled.'" The printed copy among the Madison papers is a duplicate of the copy filed by General Washington with the papers of the Constitution, and Sec. 11 is there given as actually printed.—*Journal of the Federal Convention*, 219. (Const. MSS.)

Madison accurately transcribed the report for his journal and it is this copy which is used in the text.

ARTICLE I

The stile of the Government shall be, "The United States of America."

II

The Government shall consist of supreme legislative, executive, and judicial powers.

III

The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative on the other. The Legislature shall meet on the first Monday in December in every year.

IV

Sect. 1. The members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures.

Sect. 2. Every member of the House of Representatives shall be of the age of twenty five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the State in which he shall be chosen.

Sect. 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five Members, of whom three shall be chosen in New-Hampshire, eight in Massachusetts, one in Rhode-Island and Providence Plantations, five in Connecticut, six in New-York, four in New-Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North-Carolina, five in South-Carolina, and three in Georgia.

Sect. 4. As the proportions of numbers in different States will alter from time to time; as some of the States may hereafter be divided; as others may be enlarged by addition of territory; as two or more States may be united; as new States will be erected within the limits of the United States, the Legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the provisions herein after made, at the rate of one for every forty thousand.

Sect. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of Government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the Public Treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

Sect. 6. The House of Representatives shall have the sole power of impeachment. It shall choose its Speaker and other officers.

Sect. 7. Vacancies in the House of Representatives shall be supplied by writs of election from the executive authority of the State, in the representation from which they shall happen.

V

Sect. 1. The Senate of the United States shall be chosen by the Legislatures of the several States. Each Legislature shall chuse two members. Vacancies may be supplied by the Executive until the next meeting of the Legislature. Each member shall have one vote.

Sect. 2. The Senators shall be chosen for six years; but immediately after the first election they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two and three. The seats of the members of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, of the third class at the expiration of the sixth year, so that a third part of the members may be chosen every second year.

Sect. 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the State for which he shall be chosen.

Sect. 4. The Senate shall chuse its own President and other officers.

VI

Sect. 1. The times and places and manner of holding the elections of the members of each House shall be prescribed by the Legislature of each State; but their provisions concerning them may, at any time, be altered by the Legislature of the United States.

Sect. 2. The Legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said Legislature shall seem expedient.

Sect. 3. In each House a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

Sect 4. Each House shall be the judge of the elections, returns and qualifications of its own members.

Sect 5. Freedom of speech and debate in the Legislature shall not be impeached or questioned in any Court or place out of the Legislature; and the members of each House shall, in all cases, except treason felony and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

Sect 6. Each House may determine the rules of its proceedings; may punish its members for disorderly behaviour; and may expel a member.

Sect. 7. The House of Representatives, and the Senate, when it shall be acting in a legislative ca-

pacity, shall keep a journal of their proceedings, and shall, from time to time, publish them: and the yeas and nays of the members of each House, on any question, shall at the desire of one-fifth part of the members present, be entered on the journal.

Sect. 8. Neither House, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two Houses are sitting. But this regulation shall not extend to the Senate, when it shall exercise the powers mentioned in the —— article.

Sect. 9. The members of each House shall be ineligible to, and incapable of holding any office under the authority of the United States, during the time for which they shall respectively be elected: and the members of the Senate shall be ineligible to, and incapable of holding any such office for one year afterwards.

Sect. 10. The members of each House shall receive a compensation for their services, to be ascertained and paid by the State, in which they shall be chosen.

Sect. 11. The enacting stile of the laws of the United States shall be, "Be it enacted by the Senate and Representatives in Congress assembled."

Sect. 12. Each House shall possess the right of originating bills, except in the cases beforementioned.

Sect. 13. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States for his revision: if, upon

such revision, he approve of it, he shall signify his approbation by signing it: But if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that House in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider the bill. But if after such reconsideration, two thirds of that House shall, notwithstanding the objections of the President, agree to pass it, it shall together with his objections, be sent to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of the other House also, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for or against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the legislature, by their adjournment, prevent its return; in which case it shall not be a law.

VII

Sect. 1. The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

To regulate commerce with foreign nations, and among the several States;

To establish an uniform rule of naturalization throughout the United States;

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures;

To establish Post-offices;

To borrow money, and emit bills on the credit of the United States;

To appoint a Treasurer by ballot;

To constitute tribunals inferior to the Supreme Court;

To make rules concerning captures on land and water;

To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations;

To subdue a rebellion in any State, on the application of its legislature;

To make war;

To raise armies;

To build and equip fleets;

To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions;

And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested, by this Constitution, in the government of the United States, or in any department or officer thereof;

Sect. 2. Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of

the United States, or any of them. The Legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. No attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted.

Sect. 3. The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes) which number shall, within six years after the first meeting of the Legislature, and within the term of every ten years afterwards, be taken in such manner as the said Legislature shall direct.

Sect. 4. No tax or duty shall be laid by the Legislature on articles exported from any State; nor on the migration or importation of such persons as the several States shall think proper to admit; nor shall such migration or importation be prohibited.

Sect. 5. No capitation tax shall be laid, unless in proportion to the Census hereinbefore directed to be taken.

Sect. 6. No navigation act shall be passed without the assent of two thirds of the members present in each House.

Sect. 7. The United States shall not grant any title of Nobility.

VIII

The acts of the Legislature of the United States made in pursuance of this Constitution, and all treaties made under the authority of the United States shall be the supreme law of the several States, and of the citizens and inhabitants; and the judges in the several States shall be bound thereby in their decisions; any thing in the Constitutions or laws of the several States to the contrary notwithstanding.

IX

Sect 1. The Senate of the United States shall have power to make treaties, and to appoint Ambassadors, and Judges of the Supreme Court.

Sect. 2. In all disputes and controversies now subsisting, or that may hereafter subsist between two or more States, respecting jurisdiction or territory, the Senate shall possess the following powers. Whenever the Legislature, or the Executive authority, or lawful agent of any State, in controversy with another, shall by memorial to the Senate, state the matter in question, and apply for a hearing; notice of such memorial and application shall be given by order of the Senate, to the Legislature or the Executive authority of the other State in Controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before the House. The Agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a Court for hearing and determining the matter in

question. But if the Agents cannot agree, the Senate shall name three persons out of each of the several States; and from the list of such persons each party shall alternately strike out one, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as the Senate shall direct, shall in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them shall be commissioners or Judges to hear and finally determine the controversy; provided a majority of the Judges, who shall hear the cause, agree in the determination. If either party shall neglect to attend at the day assigned, without shewing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each State, and the Clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such Court; or shall not appear to prosecute or defend their claim or cause, the Court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the President of the Senate, and shall be lodged among the public records for the security of the parties concerned. Every Commissioner shall, before he sit in judgment, take an oath, to be administered by one of the Judges of the Supreme or Superior Court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question

according to the best of his judgment, without favor, affection, or hope of reward."

Sect. 3. All controversies concerning lands claimed under different grants of two or more States, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequent to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different States.

X

Sect. 1. The Executive Power of the United States shall be vested in a single person. His stile shall be, "The President of the United States of America;" and his title shall be, "His Excellency." He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

Sect. 2. He shall, from time to time, give information to the Legislature, of the state of the Union: he may recommend to their consideration such measures as he shall judge necessary, and expedient: he may convene them on extraordinary occasions. In case of disagreement between the two Houses, with regard to the time of adjournment, he may adjourn them to such time as he thinks proper: he shall take care that the laws of the United States be duly and faithfully executed: he shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this

Constitution. He shall receive Ambassadors, and may correspond with the supreme Executives of the several States. He shall have power to grant reprieves and pardons; but his pardon shall not be pleadable in bar of an impeachment. He shall be commander in chief of the Army and Navy of the United States, and of the militia of the several States. He shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department, he shall take the following oath or affirmation, "I —— solemnly swear, (or affirm) that I will faithfully execute the office of President of the United States of America." He shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption. In case of his removal as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties, until another President of the United States be chosen, or until the disability of the President be removed.

XI

Sect. 1. The Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as shall, when necessary, from time to time, be constituted by the Legislature of the United States.

Sect. 2. The Judges of the Supreme Court, and of the Inferior Courts, shall hold their offices during good behaviour. They shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Sect. 3. The Jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States; to all cases affecting Ambassadors, other Public Ministers and Consuls; to the trial of impeachments of officers of the United States; to all cases of Admiralty and maritime jurisdiction; to controversies between two or more States, (except such as shall regard Territory or Jurisdiction) between a State and Citizens of another State, between Citizens of different States, and between a State or the Citizens thereof and foreign States, citizens or subjects. In cases of impeachment, cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be party, this jurisdiction shall be original. In all the other cases beforementioned, it shall be appellate, with such exceptions and under such regulations as the Legislature shall make. The Legislature may assign any part of the jurisdiction abovementioned (except the trial of the President of the United States) in the manner, and under the limitations which it shall think proper, to such Inferior Courts, as it shall constitute from time to time.

Sect. 4. The trial of all criminal offences (except in cases of impeachments) shall be in the State where they shall be committed; and shall be by Jury.

Sect. 5. Judgment, in cases of Impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit, under the United States. But the party convicted shall, nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

XII

No State shall coin money; nor grant letters of marque and reprisal; nor enter into any Treaty, alliance, or confederation; nor grant any title of Nobility.

XIII

No State, without the consent of the Legislature of the United States, shall emit bills of credit, or make any thing but specie a tender in payment of debts; nor lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another State, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent, as not to admit of a delay, until the Legislature of the United States can be consulted.

XIV

The Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

XV

Any person charged with treason, felony or high misdemeanor in any State, who shall flee from justice, and shall be found in any other State, shall, on demand of the Executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence.

XVI

Full faith shall be given in each State to the acts of the Legislatures, and to the records and judicial proceedings of the Courts and magistrates of every other State.

XVII

New States lawfully constituted or established within the limits of the United States may be admitted, by the Legislature, into this government; but to such admission the consent of two thirds of the members present in each House shall be necessary. If a new State shall arise within the limits of any of the present States, the consent of the Legislatures of such States shall be also necessary to its admission. If the admission be consented to, the new States shall be admitted on the same terms with the original States. But the Legislature may make conditions with the new States, concerning the Public debt which shall be then subsisting.

XVIII

The United States shall guaranty to each State a Republican form of Government; and shall pro-

tect each State against foreign invasions, and, on the application of its Legislature, against domestic violence.

XIX

On the application of the Legislatures of two thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a convention for that purpose.

XX

The members of the Legislatures, and the Executive and Judicial officers of the United States, and of the several States, shall be bound by oath to support this Constitution.

XXI

The ratification of the Conventions of —— States shall be sufficient for organizing this Constitution.

XXII

This Constitution shall be laid before the United States in Congress Assembled, for their approbation; and it is the opinion of this Convention, that it should be afterwards submitted to a Convention chosen, under the recommendation of its legislature, in order to receive the ratification of such Convention.

XXIII

To introduce this government, it is the opinion of this Convention, that each assenting Convention

should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the Conventions of —— States, should appoint and publish a day, as early as may be, and appoint a place, for commencing proceedings under this Constitution; that after such publication, the Legislatures of the several States should elect members of the Senate, and direct the election of members of the House of Representatives; and that the members of the Legislature should meet at the time and place assigned by Congress, and should, as soon as may be, after their meeting, choose the President of the United States, and proceed to execute this Constitution."

A motion was made to adjourn till Wednesday, in order to give leisure to examine the Report; which passed in the negative—N. H. no. Mas. no. C^t^ no. P^a^ ay. M^d^ ay. Virg. ay. N. C. no. S. C. no.

The House then adjourned till to-morrow 11 OC.

TUESDAY AUGUST 7TH [1] IN CONVENTION

The Report of the Committee of detail being taken up,

Mr Pinkney moved that it be referred to a Committee of the whole. This was strongly opposed by

[1] Although the secrecy of the proceedings was guarded carefully, the reason of the long adjournment was generally known outside of the Convention.

"The Convention adjourned about three weeks ago and appointed

Mr Ghorum & several others, as likely to produce unnecessary delay; and was negatived, Delaware Mary^d & Virg^a only being in the affirmative.

The preamble of the Report was agreed to nem. con. So were Art: I & II.

Art: III considered. Col. Mason doubted the propriety of giving each branch a negative on the other "in all cases." There were some cases in which it was he supposed not intended to be given as in the case of balloting for appointments.

Mr Govr Morris moved to insert "legislative acts" instead of "all cases."

Mr Williamson 2^ds him.

Mr Sherman. This will restrain the operation of the clause too much. It will particularly exclude a mutual negative in the case of ballots, which he hoped would take place.

Mr Ghorum contended that elections ought to be made by *joint ballot*. If separate ballots should be made for the President, and the two branches should be each attached to a favorite, great delay contention & confusion may ensue. These inconveniences have been felt in Mas^ts in the election of officers of little importance compared with the Executive of

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a Committee consisting of Mr Rutlege, Mr Randolph, Mr Wilson, Mr Elsworth, & Mr Gorham to draw into form the measures which had been agreed upon—they reassembled last Monday sen'night to receive the report—I suppose we shall have the result of this great business in a few weeks more."—Edward Carrington to Monroe, August 7, 1787. Monroe MSS.

Cf. King's account of the debate confirming the accuracy of Madison's report (King's *Life and Correspondence of Rufus King*, i., 617).

the U. States. The only objection agst a joint ballot is that it may deprive the Senate of their due weight; but this ought not to prevail over the respect due to the public tranquility & welfare.

Mr Wilson was for a joint ballot in several cases at least; particularly in the choice of the President, and was therefore for the amendment. Disputes between the two Houses during & concern^{g} the vacancy of the Executive might have dangerous consequences.

Col. Mason thought the amendment of Mr Govr Morris extended too far. Treaties are in a subsequent part declared to be laws, they will therefore be subjected to a negative; altho' they are to be made as proposed by the Senate alone. He proposed that the mutual negative should be restrained to "cases requiring the distinct assent" of the two Houses.

Mr Govr Morris thought this but a repetition of the same thing; the mutual negative and distinct assent, being equivalent expressions. Treaties he thought were not laws.

Mr Madison moved to strike out the words "each of which shall in all cases, have a negative on the other; the idea being sufficiently expressed in the preceding member of the article; vesting the "legislative power" in "distinct bodies," especially as the respective powers and mode of exercising them were fully delineated in a subsequent article.

Genl Pinkney 2^{ded} the motion.

On question for inserting legislative Acts as moved by Mr Govr Morris

N. H. ay. Mas. ay. Ct. ay. Pa. ay. Del. no. Md. no. Va. no. N. C. ay. S. C. no. Geo. no.

On question for agreeing to Mr. M's motion to strike out &c.—

N. H. ay. Mas. ay. Ct. no. Pa. ay. Del. ay. Md. no. Va. ay. N. C. no. S. C. ay. Geo. ay.

Mr. Madison wished to know the reasons of the Come. for fixing by ye. Constitution the time of Meeting for the Legislature; and suggested, that it be required only that one meeting at least should be held every year leaving the time to be fixed or varied by law.

Mr. Govr. Morris moved to strike out the sentence. It was improper to tie down the Legislature to a particular time, or even to require a meeting every year. The public business might not require it.

Mr. Pinkney concurred with Mr. Madison.

Mr. Ghorum. If the time be not fixed by the Constitution, disputes will arise in the Legislature; and the States will be at a loss to adjust thereto, the times of their elections. In the N. England States the annual time of meeting had been long fixed by their Charters & Constitutions, and no inconveniencey had resulted. He thought it necessary that there should be one meeting at least every year as a check on the Executive department.

Mr. Elseworth was agst. striking out the words. The Legislature will not know till they are met whether the public interest required their meeting or not. He could see no impropriety in fixing the day, as the Convention could judge of it as well as the Legislature.

Mr Wilson thought on the whole it would be best to fix the day.

Mr King could not think there would be a necessity for a meeting every year. A great vice in our system was that of legislating too much. The most numerous objects of legislation belong to the States. Those of the Nat^l^ Legislature were but few. The chief of them were commerce & revenue. When these should be once settled alterations would be rarely necessary & easily made.

Mr Madison thought if the time of meeting should be fixed by a law it w^d^ be sufficiently fixed & there would be no difficulty then as had been suggested, on the part of the States in adjusting their elections to it. One consideration appeared to him to militate strongly ag^st^ fixing a time by the Constitution. It might happen that the Legislature might be called together by the public exigencies & finish their Session but a short time before the annual period. In this case it would be extremely inconvenient to reassemble so quickly & without the least necessity. He thought one annual meeting ought to be required; but did not wish to make two unavoidable.

Col. Mason thought the objections against fixing the time insuperable: but that an annual meeting ought to be required as essential to the preservation of the Constitution. The extent of the Country will supply business. And if it should not, the Legislature, besides *legislative*, is to have *inquisitorial* powers, which cannot safely be long kept in a state of suspension.

M^r. Sherman was decided for fixing the time, as well as for frequent meetings of the Legislative body. Disputes and difficulties will arise between the two Houses, & between both & the States, if the time be changeable—frequent meetings of Parliament were required at the Revolution in England as an essential safeguard of liberty. So also are annual meetings in most of the American charters & constitutions. There will be business eno' to require it. The Western Country, and the great extent and varying state of our affairs in general will supply objects.

M^r. Randolph was ag^st. fixing any day irrevocably; but as there was no provision made any where in the Constitution for regulating the periods of meeting, and some precise time must be fixed, untill the Legislature shall make provision, he could not agree to strike out the words altogether. Instead of which he moved to add the words following—"unless a different day shall be appointed by law."

M^r. Madison 2^ded. the motion, & on the question

N. H. no. Mass. ay. C^t. no. P^a. ay. Del. ay. M^d. ay. V^a. ay. N. C. ay. S. C. ay. Geo. ay.

M^r. Govr. Morris moved to strike out Dec^r. & insert May. It might frequently happen that our measures ought to be influenced by those in Europe, which were generally planned during the Winter and of which intelligence would arrive in the Spring.

M^r. Madison 2^ded. the motion, he preferred May to Decr. because the latter would require the travelling to & from the seat of Gov^t. in the most inconvenient seasons of the year.

Mr Wilson. The Winter is the most convenient season for business.

Mr Elseworth. The summer will interfere too much with private business, that of almost all the probable members of the Legislature being more or less connected with agriculture.

Mr Randolph. The time is of no great moment now, as the Legislature can vary it. On looking into the Constitutions of the States, he found that the times of their elections with which the election of the Nat^l^ Representatives would no doubt be made to coincide, would suit better with Decr than May. And it was advisable to render our innovations as little incommodious as possible.

On the question for "May" instead of "Dec^r^"

N. H. no. Mass. no. C^t^ no. P^a^ no. Del. no. M^d^ no. V^a^ no. N. C. no. S. C. ay. Geo. ay.

Mr Read moved to insert after the word "Senate," the words, "subject to the Negative to be hereafter provided." His object was to give an absolute Negative to the Executive—He considered this as so essential to the Constitution, to the preservation of liberty, & to the public welfare, that his duty compelled him to make the Motion.

Mr Govr Morris 2^ded^ him. And on the question

N. H. no. Mass. no. C^t^ no. P^a^ no. Del. ay. M^d^ no. V^a^ no. N. C. no. S. C. no. Geo. no.

Mr Rutlidge. Altho' it is agreed on all hands that an annual meeting of the Legislature should be made necessary, yet that point seems not to be free from doubt as the clause stands. On this suggestion,

"Once at least in every year," were inserted, nem. con.

Art. III with the foregoing alterations was ag^{d} to nem. con., and is as follows: "The Legislative power shall be vested in a Congress to consist of 2 separate & distinct bodies of men; a House of Rep^{s} & a Senate. The Legislature shall meet at least once in every year, and such meeting shall be on the 1st Monday in Decr unless a different day shall be appointed by law."

"Article IV. Sect. 1. taken up."

Mr Govr Morris moved to strike out the last member of the section beginning with the words "qualifications of Electors," in order that some other provision might be substituted which w^{d} restrain the right of suffrage to freeholders.

Mr Fitzsimons 2^{ded} the motion

Mr Williamson was opposed to it.

Mr Wilson. This part of the Report was well considered by the Committee, and he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications for all the States. Unnecessary innovations he thought too should be avoided. It would be very hard & disagreeable for the same persons at the same time, to vote for representatives in the State Legislature and to be excluded from a vote for those in the Nat^{l} Legislature.

Mr Govr Morris. Such a hardship would be neither great nor novel. The people are accustomed to it and not dissatisfied with it, in several of the States.

In some the qualifications are different for the choice of the Govr & Representatives; In others for different Houses of the Legislature. Another objection ag^st the clause as it stands is that it makes the qualifications of the Nat^l Legislature depend on the will of the States, which he thought not proper.

Mr Elseworth. thought the qualifications of the electors stood on the most proper footing. The right of suffrage was a tender point, and strongly guarded by most of the State Constitutions. The people will not readily subscribe to the Nat^l Constitution if it should subject them to be disfranchised. The States are the best Judges of the circumstances & temper of their own people.

Col. Mason. The force of habit is certainly not attended to by those Gentlemen who wish for innovations on this point. Eight or nine States have extended the right of suffrage beyond the freeholders. What will the people there say, if they should be disfranchised. A power to alter the qualifications would be a dangerous power in the hands of the Legislature.

Mr Butler. There is no right of which the people are more jealous than that of suffrage Abridgments of it tend to the same revolution as in Holland where they have at length thrown all power into the hands of the Senates, who fill up vacancies themselves, and form a rank aristocracy.

Mr Dickinson. had a very different idea of the tendency of vesting the right of suffrage in the freeholders of the Country. He considered them as the

best guardians of liberty; And the restriction of the right to them as a necessary defence agᵗˢ the dangerous influence of those multitudes without property & without principle with which our Country like all others, will in time abound. As to the unpopularity of the innovation it was in his opinion chimerical. The great mass of our Citizens is composed at this time of freeholders, and will be pleased with it.

Mʳ Elseworth. How shall the freehold be defined? Ought not every man who pays a tax, to vote for the representative who is to levy & dispose of his money? Shall the wealthy merchants & manufacturers, who will bear a full share of the public burthens be not allowed a voice in the imposition of them. Taxation & representation ought to go together.

Mʳ Govʳ Morris. He had long learned not to be the dupe of words. The sound of aristocracy therefore had no effect on him. It was the thing, not the name, to which he was opposed, and one of his principal objections to the Constitution as it is now before us, is that it threatens this Country with an aristocracy. The aristocracy will grow out of the House of Representatives. Give the votes to people who have no property, and they will sell them to the rich who will be able to buy them. We should not confine our attention to the present moment. The time is not distant when this Country will abound with mechanics & manufacturers who will receive their bread from their employers. Will such men be

the secure & faithful guardians of liberty? Will they be the impregnable barrier agst aristocracy?—He was as little duped by the association of the words, "taxation & Representation." The man who does not give his vote freely is not represented. It is the man who dictates the vote. Children do not vote. Why? because they want prudence, because they have no will of their own. The ignorant & the dependent can be as little trusted with the public interest. He did not conceive the difficulty of defining "freeholders" to be insuperable. Still less that the restriction could be unpopular. $\frac{9}{10}$ of the people are at present freeholders and these will certainly be pleased with it. As to Merch^{ts} &c. if they have wealth & value the right they can acquire it. If not they don't deserve it.

Col. Mason. We all feel too strongly the remains of antient prejudices, and view things too much through a British medium. A Freehold is the qualification in England, & hence it is imagined to be the only proper one. The true idea in his opinion was that every man having evidence of attachment to & permanent common interest with the Society ought to share in all its rights & privileges. Was this qualification restrained to freeholders? Does no other kind of property but land evidence a common interest in the proprietor? does nothing besides property mark a permanent attachment. Ought the merchant, the monied man, the parent of a number of children whose fortunes are to be pursued in his own Country to be viewed as suspicious characters,

and unworthy to be trusted with the common rights of their fellow Citizens

Mr Madison. the right of suffrage is certainly one of the fundamental articles of republican Government, and ought not to be left to be regulated by the Legislature. A gradual abridgment of this right has been the mode in which aristocracies have been built on the ruins of popular forms. Whether the Constitutional qualification ought to be a freehold, would with him depend much on the probable reception such a change would meet with in States where the right was now exercised by every description of people. In several of the States a freehold was now the qualification. Viewing the subject in its merits alone, the freeholders of the Country would be the safest depositories of Republican liberty. In future times a great majority of the people will not only be without landed, but any other sort of property. These will either combine, under the influence of their common situation: in which case, the rights of property & the public liberty, will not be secure in their hands: or which is more probable, they will become the tools of opulence & ambition, in which case there will be equal danger on another side. The example of England has been misconceived (by Col. Mason.) A very small proportion of the Representatives are there chosen by freeholders. The greatest part are chosen by the Cities & boroughs, in many of which the qualification of suffrage is as low as it is in any one of the U. S. and it was in the boroughs & Cities rather than the

Counties, that bribery most prevailed, & the influence of the Crown on elections was most dangerously exerted.[1]

Doc[r] Franklin. It is of great consequence that we sh[d] not depress the virtue & public spirit of our

[1] "Note to speech of J. M. in Convention of 1787, August 7th:

"As appointments for the General Government here contemplated will, in part, be made by the State Gov[ts], all the Citizens in States where the right of suffrage is not limited to the holders of property, will have an indirect share of representation in the General Government. But this does not satisfy the fundamental principle that men cannot be justly bound by laws in making which they have no part. Persons & property being both essential objects of Government, the most that either can claim, is such a structure of it as will leave a reasonable security for the other. And the most obvious provision, of this double character, seems to be that of confining to the holders of property the object deemed least secure in popular Gov[ts] the right of suffrage for one of the two Legislative branches. This is not without example among us, as well as other constitutional modifications, favouring the influence of property in the Government. But the U. S. have not reached the stage of Society in which conflicting feelings of the Class with, and the Class without property, have the operation natural to them in Countries fully peopled. The most difficult of all political arrangements is that of so adjusting the claims of the two Classes as to give security to each and to promote the welfare of all. The federal principle,—which enlarges the sphere of power without departing from the elective basis of it and controuls in various ways the propensity in small republics to rash measures & the facility of forming & executing them, will be found the best expedient yet tried for solving the problem."—Madison's note.

"Note to the speech of J. M. on the [7th] day of [August].

"These observations (in the speech of J. M. see debates in the Convention of 1787, on the [7th] day of [August]) do not convey the speaker's more full & matured view of the subject, which is subjoined. He felt too much at the time the example of Virginia.

"The right of suffrage is a fundamental Article in Republican Constitutions. The regulation of it is, at the same time, a task of peculiar delicacy. Allow the right exclusively to property, and the rights of persons may be oppressed. The feudal polity, alone sufficiently proves it. Extend it equally to all, and the rights of property, or the claims

common people; of which they displayed a great deal during the war, and which contributed principally to the favorable issue of it. He related the honor-

of justice, may be overruled by a majority without property or interested in measures of injustice. Of this abundant proof is afforded by other popular Govts and is not without examples in our own, particularly in the laws impairing the obligation of contracts.

"In civilized communities, property as well as personal rights is an essential object of the laws, which encourage industry by securing the enjoyment of its fruits; that industry from which property results, & that enjoyment which consists not merely in its immediate use, but in its posthumous destination to objects of choice and of kindred affection.

"In a just & a free Government, therefore, the rights both of property & of persons ought to be effectually guarded. Will the former be so in case of a universal & equal suffrage? Will the latter be so in case of a suffrage confined to the holders of property?

"As the holders of property have at stake all the other rights common to those without property, they may be the more restrained from infringing, as well as the less tempted to infringe the rights of the latter. It is nevertheless certain, that there are various ways in which the rich may oppress the poor; in which property may oppress liberty; and that the world is filled with examples. It is necessary that the poor should have a defence against the danger.

"On the other hand, the danger to the holders of property cannot be disguised, if they be undefended against a majority without property. Bodies of men are not less swayed by interest than individuals, and are less controlled by the dread of reproach and the other motives felt by individuals. Hence the liability of the rights of property, and of the impartiality of laws affecting it, to be violated by Legislative majorities having an interest real or supposed in the injustice: Hence agrarian laws, and other leveling schemes: Hence the cancelling or evading of debts, and other violations of contracts. We must not shut our eyes to the nature of man, nor to the light of experience. Who would rely on a fair decision from three individuals if two had an interest in the case opposed to the rights of the third? Make the number as great as you please, the impartiality will not be increased; nor any further security against injustice be obtained, than what may result from the greater difficulty of uniting the wills of a greater number.

"In all Govts there is a power which is capable of oppressive exercise. In Monarchies and Aristocracies oppression proceeds from a

able refusal of the American seamen who were carried in great numbers into the British Prisons during the war, to redeem themselves from misery or to seek their fortunes, by entering on board the Ships of the

want of sympathy & responsibility in the Gov^t^ towards the people. In popular Governments the danger lies in an undue sympathy among individuals composing a majority, and a want of responsibility in the majority to the minority. The characteristic excellence of the political System of the U. S. arises from a distribution and organization of its powers, which at the same time that they secure the dependence of the Gov^t^ on the will of the nation, provides better guards than are found in any other popular Gov^t^ against interested combinations of a Majority against the rights of a Minority.

"The U. States have a precious advantage also in the actual distribution of property particularly the landed property; and in the universal hope of acquiring property. This latter peculiarity is among the happiest contrasts in their situation to that of the old world, where no anticipated change in this respect, can generally inspire a like sympathy with the rights of property. There may be at present, a Majority of the Nation, who are even freeholders, or the heirs or aspirants to Freeholds. And the day may not be very near when such will cease to make up a Majority of the community. But they cannot always so continue. With every admissible subdivision of the Arable lands, a populousness not greater than that of England or France will reduce the holders to a Minority. And whenever the majority shall be without landed or other equivalent property and without the means or hope of acquiring it, what is to secure the rights of property ag^ts^ the danger from an equality & universality of suffrage, vesting compleat power over property in hands without a share in it: not to speak of a danger in the meantime from a dependence of an increasing number on the wealth of a few? In other Countries this dependence results in some from the relations between Landlords & Tenants in others both from that source & from the relations between wealthy capitalists and indigent labourers. In the U. S. the occurrence must happen from the last source; from the connection between the great Capitalists in Manufactures & Commerce and the numbers employed by them. Nor will accumulations of Capital for a certain time be precluded by our laws of descent & of distribution; Such being the enterprise inspired by free Institutions, that great wealth in the hands of individuals and associations may not be unfrequent. But it may be observed, that the

Enemies to their Country; contrasting their patriotism with a contemporary instance in which the British seamen made prisoners by the Americans, readily entered on the ships of the latter on being

opportunities may be diminished, and the permanency defeated by the equalizing tendency of our laws.

"No free Country has ever been without parties, which are a natural offspring of Freedom. An obvious and permanent division of every people is into the owners of the soil, and the other inhabitants. In a certain sense the country may be said to belong to the former. If each landholder has an exclusive property in his share, the Body of Landholders have an exclusive property in the whole. As the Soil becomes subdivided, and actually cultivated by the owners, this view of the subject derives force from the principle of natural law, which vests in individuals an exclusive right to the portions of ground with which he has incorporated his labour & improvements. Whatever may be the rights of others derived from their birth in the Country, from their interest in the highways & other parcels left open for common use, as well as in the national edifices and monuments; from their share in the public defence, and from their concurrent support of the Govt, it would seem unreasonable to extend the right so far as to give them when become the majority, a power of Legislation over the landed property without the consent of the proprietors. Some barrier agst the invasion of their rights would not be out of place in a just and provident System of Govt The principle of such an arrangement has prevailed in all Govts where peculiar privileges or interests held by a part were to be secured agst violation, and in the various associations where pecuniary or other property forms the stake. In the former case a defensive right has been allowed; and if the arrangement be wrong, it is not in the defense but in the kind of privilege to be defended. In the latter case, the shares of suffrage, allotted to individuals have been with acknowledged justice apportioned more or less to their respective interests in the Common Stock.

"These reflections suggest the expediency of such a modification of Govt as would give security to the part of the Society having most at stake and being most exposed to danger. Three modifications present themselves.

"1. *Confining* the right of suffrage to freeholders, & to such as hold an equivalent property, convertible of course into freeholds. The objection to this regulation is obvious. It violates the vital principle

promised a share of the prizes that might be made out of their own Country. This proceeded he said from the different manner in which the common people were treated in America & G. Britain. He

of free Govt that those who are to be bound by laws, ought to have a voice in making them. And the violation wd be more strikingly unjust as the law makers become the minority. The regulation would be as unpropitious, also, as it would be unjust. It would engage the numerical & physical force in a constant struggle agst the public authority; unless kept down by a standing army fatal to all parties.

"2. Confining the right of suffrage for one Branch to the holders of property, and for the other Branch to those without property. This arrangement which wd give a mutual defence, where there might be mutual danger of encroachment, has an aspect of equality & fairness. But it wd not be in fact either equal or fair, because the rights to be defended would be unequal, being on one side those of property as well as of persons, and on the other those of persons only. The temptation also to encroach tho' in a certain degree mutual, wd be felt more strongly on one side than on the other: It would be more likely to beget an abuse of the Legislative Negative in extorting concessions at the expence of property, than the reverse. The division of the State into two Classes, with distinct & independt Organs of power, and without any intermingled agency whatever, might lead to contests & antipathies not dissimilar to those between the Patricians & Plebeians at Rome.

"3. Confining the right of electing one Branch of the Legislature to freeholders, and admitting all others to a common right with holders of property in electing the other Branch. This wd give a defensive power to holders of property, and to the class also without property when becoming a majority of electors, without depriving them in the meantime of a participation in the Public Councils. If the holders of property would thus have a two-fold share of representation, they wd have at the same time a two-fold stake in it, the rights of property as well as of persons, the two-fold object of political Institutions. And if no exact & safe equilibrium can be introduced, it is more reasonable that a preponderating weight shd be allowed to the greater interest than to the lesser. Experience alone can decide how far the practice in this case would correspond with the Theory. Such a distribution of the right of suffrage was tried in N. York and has been abandoned whether from experienced evils, or party calculations, may possibly be a question. It is still on trial in N. Carolina, with what practical

did not think that the elected had any right in any case to narrow the privileges of the electors. He quoted as arbitrary the British Statute setting forth the danger of tumultuous meetings, and under that pretext narrowing the right of suffrage to persons having freeholds of a certain value; observing that this Statute was soon followed by another under the succeeding Parliam^{t} subjecting the people who had no votes to peculiar labors & hardships. He was persuaded also that such a restriction as was proposed would give great uneasiness in the populous States. The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description.

indications is not known. It is certain that the trial, to be satisfactory ought to be continued for no inconsiderable period; untill in fact the non-freeholders should be the majority.

"4. Should experience or public opinion require an equal & universal suffrage for each branch of the Gov^{t} such as prevails generally in the U. S., a resource favorable to the rights of the landed & other property, when its possessors become the minority, may be found in an enlargement of the Election Districts for one branch of the Legislature, and an extension of its period of service. Large districts are manifestly favorable to the election of persons of general respectability, and of probable attachment to the rights of property, over competitors depending on the personal solicitation practicable on a contracted theatre. And altho' an ambitious candidate, of personal distinction, might occasionally recommend himself to popular choice by espousing a popular though unjust object, it might rarely happen to many districts at the same time. The tendency of a longer period of service would be, to render the Body more stable in its policy, and more capable of stemming popular currents taking a wrong direction, till reason & justice could regain their ascendancy.

"5. Should even such a modification as the last be deemed inadmissible, and universal suffrage and very short periods of elections within

M[r] Mercer. The Constitution is objectionable in many points, but in none more than the present. He objected to the footing on which the qualification was put, but particularly to the *mode of election* by the people. The people can not know & judge of the characters of Candidates. The worse possible choice will be made. He quoted the case of the Senate in Virg[a] as an example in point. The people in Towns can unite their votes in favor of one favorite; & by that means always prevail over the people of the Country, who being dispersed will scatter their votes among a variety of candidates.

M[r] Rutlidge thought the idea of restraining the right of suffrage to the freeholders a very unadvised one. It would create division among the people & make enemies of all those who should be excluded.

contracted spheres, be required for each branch of the Gov[t], the security for the holders of property when the minority, can only be derived from the ordinary influence possessed by property, & the superior information incident to its holders; from the popular sense of justice enlightened & enlarged by a diffusive education; and from the difficulty of combining & effectuating unjust purposes throughout an extensive country; a difficulty essentially distinguishing the U. S. & even most of the individual States, from the small communities where a mistaken interest or contagious passion, could readily unite a majority of the whole under a factious leader, in trampling on the rights of the minor party.

"Under every view of the subject, it seems indispensable that the Mass of Citizens should not be without a voice, in making the laws which they are to obey, & in chusing the Magistrates who are to administer them, and if the only alternative be between an equal & universal right of suffrage for each branch of the Gov[t] and a confinement of the *entire* right to a part of the Citizens, it is better that those having the greater interest at stake namely that of property & persons both, should be deprived of half their share in the Gov[t] than, that those having the lesser interest, that of personal rights only, should be deprived of the whole."—Madison's note.[1]

On the question for striking out as moved by Mr Govr Morris, from the word "qualifications" to the end of the III article

N. H. no. Mass. no. Ct no. Pa no. Del. ay. Md divd Va no. N. C. no. S. C. no. Geo. not prest

Adjourned

Wednesday Augst 8. In Convention

Art: IV. sect. 1.—Mr Mercer expressed his dislike of the whole plan, and his opinion that it never could succeed.

Mr Ghorum. he had never seen any inconveniency from allowing such as were not freeholders to vote, though it had long been tried. The elections in Phila, N. York & Boston where the Merchants & Mechanics vote are at least as good as those made by freeholders only. The case in England was not accurately stated yesterday (by Mr Madison) The Cities & large towns are not the seat of Crown influence & corruption. These prevail in the Boroughs, and not on account of the right which those who are not freeholders have to vote, but of the smallness of the number who vote. The people have been long accustomed to this right in various parts of America, and will never allow it to be abridged. We must consult their rooted prejudices if we expect their concurrence in our propositions.

Mr Mercer did not object so much to an election

by the people at large including such as were not freeholders, as to their being left to make their choice without any guidance. He hinted that Candidates ought to be nominated by the State Legislatures.

On the question for agreeing to Art: IV—Sect. 1 it pass^{d} nem. con.

Art. IV. Sect. 2. taken up.

Col. Mason was for opening a wide door for emigrants; but did not chuse to let foreigners and adventurers make laws for us & govern us. Citizenship for three years was not enough for ensuring that local knowledge which ought to be possessed by the Representative. This was the principal ground of his objection to so short a term. It might also happen that a rich foreign Nation, for example Great Britain, might send over her tools who might bribe their way into the Legislature for insidious purposes. He moved that "seven" years instead of "three," be inserted.

Mr Govr Morris 2^{ded} the Motion, & on the question, all the States agreed to it except Connecticut.

Mr Sherman moved to strike out the word "resident" and insert "inhabitant," as less liable to misconstruction.

Mr Madison 2^{ded} the motion, both were vague, but the latter least so in common acceptation, and would not exclude persons absent occasionally for a considerable time on public or private business. Great disputes had been raised in Virg^{a} concerning the meaning of residence as a qualification of Representatives which were determined more according to

the affection or dislike to the man in question, than to any fixt interpretation of the word.

Mr Wilson preferred "inhabitant."

Mr Govr Morris. was opposed to both and for requiring nothing more than a freehold. He quoted great disputes in N. York occasioned by these terms, which were decided by the arbitrary will of the majority. Such a regulation is not necessary. People rarely chuse a nonresident—It is improper as in the 1st branch, *the people at large*, not the *States*, are represented.

Mr Rutlidge urged & moved, that a residence of 7 years sh^d^ be required in the State Wherein the Member sh^d^ be elected. An emigrant from N. England to S. C. or Georgia would know little of its affairs and could not be supposed to acquire a thorough knowledge in less time.

Mr Read reminded him that we were now forming a *Nat^l^* Gov^t^ and such a regulation would correspond little with the idea that we were one people.

Mr Wilson. enforced the same consideration.

Mr Madison suggested the case of new States in the West, which could have perhaps no representation on that plan.

Mr Mercer. Such a regulation would present a greater alienship among the States than existed under the old federal system. It would interweave local prejudices & State distinctions in the very Constitution which is meant to cure them. He mentioned instances of violent disputes raised in Maryland concerning the term "residence."

Mr Elseworth thought seven years of residence was by far too long a term: but that some fixt term of previous residence would be proper. He thought one year would be sufficient, but seemed to have no objection to three years.

Mr Dickinson proposed that it should read "inhabitant actually resident for —— years." This would render the meaning less indeterminate.

Mr Wilson. If a short term should be inserted in the blank, so strict an expression might be construed to exclude the members of the Legislature, who could not be said to be actual residents in their States whilst at the Seat of the Genl Government.

Mr Mercer. It would certainly exclude men, who had once been inhabitants, and returning from residence elsewhere to resettle in their original State; although a want of the necessary knowledge could not in such cases be presumed.

Mr Mason thought 7 years too long, but would never agree to part with the principle. It is a valuable principle. He thought it a defect in the plan that the Representatives would be too few to bring with them all the local knowledge necessary. If residence be not required, Rich men of neighbouring States, may employ with success the means of corruption in some particular district and thereby get into the public Councils after having failed in their own State. This is the practice in the boroughs of England.

On the question for postponing in order to consider Mr Dickinsons motion

N. H. no. Mass. no. C^{t} no. N. J. no. P^{a} no. Del. no. M^{d} ay. V^{a} no. N. C. no. S. C. ay. Geo. ay.

On the question for inserting "inhabitant" in place of "resident"—ag^{d} to nem. con.

Mr Elseworth & Col. Mason move to insert "one year" for previous inhabitancy.

Mr Williamson liked the Report as it stood. He thought "resident" a good eno' term. He was agst requiring any period of previous residence. New residents if elected will be most zealous to conform to the will of their constituents, as their conduct will be watched with a more jealous eye.

Mr Butler & Mr Rutlidge moved "three years" instead of "one year" for previous inhabitancy.

On the question for 3 years,

N. H. no. Mass. no. C^{t} no. N. J. no. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. ay. Geo. ay.

On the question for "1 year"

N. H. no—Mass. no. C^{t} no. N. J. ay. P^{a} no. Del. no. M^{d} div^{d} V^{a} no. N. C. ay. S. C. ay. Geo. ay.

Art. IV. Sect. 2. as amended in manner preceding, was agreed to nem. con.

Art. IV. Sect. 3. taken up.

Genl Pinkney & Mr Pinkney moved that the number of Representatives allotted to S. Carol^{a} be "six." On the question,

N. H. no. Mass. no. C^{t} no. N. J. no. P^{a} no. Delaware ay. M^{d} no. V^{a} no. N. C. ay. S. C. ay. Geo. ay.

The 3. Sect of Art: IV, was then agreed to.

Art: IV. Sect. 4. taken up.

Mr Williamson moved to strike out "according to the provisions hereinafter made" and to insert the words "according to the rule hereafter to be provided for direct taxation."—See Art. VII. Sect. 3.

On the question for agreeing to Mr Williamson's amendment

N. H. ay. Mass. ay. C^t^ ay. N. J. no. P^a^ ay. Del. no. M^d^ ay. V^a^ ay. N. C. ay. S. C. ay. Geo. ay.

Mr King wished to know what influence the vote just passed was meant to have on the succeeding part of the Report, concerning the admission of Slaves into the rule of Representation. He could not reconcile his mind to the article if it was to prevent objections to the latter part. The admission of slaves was a most grating circumstance to his mind, & he believed would be so to a great part of the people of America. He had not made a strenuous opposition to it heretofore because he had hoped that this concession would have produced a readiness which had not been manifested, to strengthen the Genl Gov^t^ and to mark a full confidence in it. The Report under consideration had by the tenor of it, put an end to all those hopes. In two great points the hands of the Legislature were absolutely tied. The importation of slaves could not be prohibited—exports could not be taxed. Is this reasonable? What are the great objects of the Genl System? 1. defence ag^st^ foreign invasion. 2. ag^st^ internal sedi-

tion. Shall all the States then be bound to defend each; & shall each be at liberty to introduce a weakness which will render defence more difficult? Shall one part of the U. S. be bound to defend another part, and that other part be at liberty not only to increase its own danger, but to withhold the compensation for the burden? If slaves are to be imported shall not the exports produced by their labor, supply a revenue the better to enable the Genl Gov^{t} to defend their Masters? There was so much inequality & unreasonableness in all this, that the people of the Northern States could never be reconciled to it. No candid man could undertake to justify it to them. He had hoped that some accommodation w^{d} have taken place on this subject; that at least a time w^{d} have been limited for the importation of slaves. He never could agree to let them be imported without limitation & then be represented in the Nat^{l} Legislature. Indeed he could so little persuade himself of the rectitude of such a practice, that he was not sure he could assent to it under any circumstances. At all events, either slaves should not be represented, or exports should be taxable.

Mr Sherman regarded the slave trade as iniquitous; but the point of representation having been settled after much difficulty & deliberation, he did not think himself bound to make opposition; especially as the present article as amended did not preclude any arrangement whatever on that point in another place of the Report.

Mr Madison objected to 1 for every 40.000 inhabi-

tants as a perpetual rule. The future increase of population if the Union sh^{d} be permanent, will render the number of Representatives excessive.

Mr Ghorum. It is not to be supposed that the Gov^{t} will last so long as to produce this effect. Can it be supposed that this vast Country including the Western territory will 150 years hence remain one nation?

Mr Elseworth. If the Gov^{t} should continue so long, alterations may be made in the Constitution in the manner proposed in a subsequent article.

Mr Sherman & Mr Madison moved to insert the words "not exceeding," before the words "1 for every 40.000. which was agreed to nem. con.

Mr Govr Morris moved to insert "free" before the word inhabitants. Much he said would depend on this point. He never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of heaven on the States where it prevailed. Compare the free regions of the Middle States, where a rich & noble cultivation marks the prosperity & happiness of the people, with the misery & poverty which overspread the barren wastes of V^{a} Mayr^{d} & the other States having slaves. Travel thro' ye whole Continent & you behold the prospect continually varying with the appearance & disappearance of slavery. The moment you leave ye E. States & enter N. York, the effects of the institution become visible, passing thro' the Jerseys & entering P^{a} every criterion of superior improvement witnesses the change. Proceed southw^{dly} & every

according to the taxes paid by them, and the Negroes are only included in the Estimate of the taxes. This was his idea of the matter.

Mr. Pinkney, considered the fisheries & the Western frontier as more burthensome to the U. S. than the slaves. He thought this could be demonstrated if the occasion were a proper one.

Mr. Wilson, thought the motion premature. An agreement to the clause would be no bar to the object of it.

Question On motion to insert "free" before "inhabitants,

N. H. no. Mass. no. Ct. no. N. J. ay. Pa. no. Del. no. Md. no. Va. no. N. C. no. S. C. no. Geo. no.

On the suggestion of Mr. Dickinson the words, "provided that each State shall have one representative at least,"—were added nem. con.

Art. IV. Sect. 4. as amended was agreed to con. nem.

Art. IV. Sect. 5. taken up

Mr. Pinkney moved to strike out Sect. 5. As giving no peculiar advantage to the House of Representatives, and as clogging the Govt. If the Senate can be trusted with the many great powers proposed, it surely may be trusted with that of originating money bills.

Mr. Ghorum. was agst allowing the Senate to *originate;* but only to *amend.*

Mr. Govr. Morris. It is particularly proper that the Senate shd have the right of originating money bills.

them by excises, and duties on imports: both of which will fall heavier on them than on the Southern inhabitants; for the bohae tea used by a Northern freeman, will pay more tax than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence and the rag that covers his nakedness. On the other side the Southern States are not to be restrained from importing fresh supplies of wretched Africans, at once to increase the danger of attack, and the difficulty of defence; nay they are to be encouraged to it by an assurance of having their votes in the Nat^l^ Gov^t^ increased in proportion, and are at the same time to have their exports & their slaves exempt from all contributions for the public service. Let it not be said that direct taxation is to be proportioned to representation. It is idle to suppose that the Genl Gov^t^ can stretch its hand directly into the pockets of the people scattered over so vast a Country. They can only do it through the medium of exports imports & excises. For What then are all the sacrifices to be made? He would sooner submit himself to a tax for paying for all the negroes in the U. States, than saddle posterity with such a Constitution.

Mr Dayton 2^ded^ the motion. He did it he said that his sentiments on the subject might appear whatever might be the fate of the amendment.

Mr Sherman, did not regard the admission of the Negroes into the ratio of representation, as liable to such insuperable objections. It was the freemen of the South^n^ States who were in fact to be represented

according to the taxes paid by them, and the Negroes are only included in the Estimate of the taxes. This was his idea of the matter.

Mr. Pinkney, considered the fisheries & the Western frontier as more burthensome to the U. S. than the slaves. He thought this could be demonstrated if the occasion were a proper one.

Mr. Wilson, thought the motion premature. An agreement to the clause would be no bar to the object of it.

Question On motion to insert "free" before "inhabitants,

N. H. no. Mass. no. Ct. no. N. J. ay. Pa. no. Del. no. Md. no. Va. no. N. C. no. S. C. no. Geo. no.

On the suggestion of Mr. Dickinson the words, "provided that each State shall have one representative at least,"—were added nem. con.

Art. IV. Sect. 4. as amended was agreed to con. nem.

Art. IV. Sect. 5. taken up

Mr. Pinkney moved to strike out Sect. 5. As giving no peculiar advantage to the House of Representatives, and as clogging the Govt. If the Senate can be trusted with the many great powers proposed, it surely may be trusted with that of originating money bills.

Mr. Ghorum. was agst. allowing the Senate to *originate;* but only to *amend.*

Mr. Govr. Morris. It is particularly proper that the Senate shd. have the right of originating money bills.

They will sit constantly, will consist of a smaller number, and will be able to prepare such bills with due correctness; and so as to prevent delay of business in the other House.

Col. Mason was unwilling to travel over this ground again. To strike out the Section, was to unhinge the compromise of which it made a part. The duration of the Senate made it improper. He does not object to that duration. On the Contrary he approved of it. But joined with the smallness of the number, it was an argument against adding this to the other great powers vested in that body. His idea of an Aristocracy was that it was the govern^{t} of the few over the many. An aristocratic body, like the screw in mechanics, work^{g} its way by slow degrees, and holding fast whatever it gains, should ever be suspected of an encroaching tendency. The purse strings should never be put into its hands.

Mr Mercer, considered the exclusive power of originating Money bills as so great an advantage, that it rendered the equality of votes in the Senate ideal & of no consequence.

Mr Butler was for adhering to the principle which had been settled.

Mr Wilson was opposed to it on its merits without regard to the compromise.

Mr Elseworth did not think the clause of any consequence, but as it was thought of consequence by some members from the larger States, he was willing it should stand.

Mr Madison was for striking it out; considering it

as of no advantage to the large States as fettering the Gov^t and as a source of injurious altercations between the two Houses.

On the question for striking out "Sect. 5, Art. IV"

N. H. no. Mass. no. C^t no. N. J. ay. P^a ay. Del. ay. M^d ay. V^a ay. N. C. no. S. C. ay. Geo. ay.

Adj^d

THURSDAY, AUG^ST 9. IN CONVENTION

Art: IV. Sect. 6. Mr Randolph expressed his dissatisfaction at the disagreement yesterday to Sect. 5. concerning money bills, as endangering the success of the plan, and extremely objectionable in itself; and gave notice that he should move for a reconsideration of the vote.

Mr Williamson said he had formed a like intention.

Mr Wilson, gave notice that he sh^d move to reconsider the vote, requiring seven instead of three years of Citizenship as a qualification of candidates for the House of Representatives.

Art. IV. Sec. 6. & 7. Agreed to nem. con.

Art. V. Sect. 1. taken up.

Mr Wilson objected to vacancies in the Senate being supplied by the Executives of the States. It was unnecessary as the Legislatures will meet so frequently. It removes the appointment too far from the people; the Executives in most of the States being elected by the Legislatures. As he had always thought the appointment of the Executives by the

Legislative department wrong; so it was still more so that the Executive should elect into the Legislative department.

Mr. Randolph thought it necessary in order to prevent inconvenient chasms in the Senate. In some States the Legislatures meet but once a year. As the Senate will have more power & consist of a smaller number than the other House, vacancies there will be of more consequence. The Executives might be safely trusted he thought with the appointment for so short a time.

Mr. Elseworth. It is only said that the Executive *may* supply vacancies. When the Legislative meeting happens to be near, the power will not be exerted. As there will be but two members from a State vacancies may be of great moment.

Mr. Williamson. Senators may resign or not accept. This provision is therefore absolutely necessary.

On the question for striking out "vacancies shall be supplied by the Executives

N. H. no. Mass. no. Ct. no. N. J. no. Pa. ay. Md. divd. Va. no. N. C. no. S. C. no. Geo. no.

Mr. Williamson moved to insert after "vacancies shall be supplied by the Executives," the following words "unless other provision shall be made by the Legislature" (of the State).

Mr. Elseworth. He was willing to trust the Legislature, or the Executive of a State, but not to give the former a discretion to refer appointments for the Senate to whom they pleased.

Question on Mr. Williamson's motion

N. H. no. Mass. no. Ct. no. N. J. no. Pa. no. Md. ay. Va. no. N. C. ay. S. C. ay. Geo. ay.

Mr. Madison in order to prevent doubts whether resignations could be made by Senators, or whether they could refuse to accept, moved to strike out the words after "vacancies," & insert the words "happening by refusals to accept, resignations or otherwise, may be supplied by the Legislature of the State in the representation of which such vacancies shall happen, or by the Executive thereof until the next meeting of the Legislature "

Mr. Govr. Morris this is absolutely necessary, otherwise, as members chosen into the Senate are disqualified from being appointed to any office by Sect. 9. of this art: it will be in the power of a Legislature by appointing a man a Senator agst. his consent, to deprive the U. S. of his services.

The motion of Mr. Madison was agreed to nem. con.

Mr. Randolph called for division of the Section, so as to leave a distinct question on the last words "each member shall have one vote." He wished this last sentence to be postponed until the reconsideration should have taken place on Sect. 5. Art. IV. concerning money bills. If that section should not be reinstated his plan would be to vary the representation in the Senate.

Mr. Strong concurred in Mr. Randolph's ideas on this point.

Mr. Read did not consider the section as to money bills of any advantage to the larger States and had

voted for striking it out as being viewed in the same light by the larger States. If it was considered by them as of any value, and as a condition of the equality of votes in the Senate, he had no objection to its being re-instated.

Mr. Wilson—Mr. Elseworth & Mr. Madison urged that it was of no advantage to the larger States, and that it might be a dangerous source of contention between the two Houses. All the principal powers of the Natl. Legislature had some relation to money.

Docr. Franklin, considered the two clauses, the originating of money bills, and the equality of votes in the Senate, as essentially connected by the compromise which had been agreed to.

Col. Mason said this was not the time for discussing this point. When the originating of money bills shall be reconsidered, he thought it could be demonstrated that it was of essential importance to restrain the right to the House of Representatives the immediate choice of the people.

Mr. Williamson. The State of N. C. had agreed to an equality in the Senate, merely in consideration that money bills should be confined to the other House: and he was surprised to see the smaller States forsaking the condition on which they had received their equality.

Question on the section 1. down to the last sentence

N. H. ay. Mass. no. Ct. ay. N. J. ay. Pa.[1] no.

[1] "In the printed Journal Pennsylvania ay."—Madison's Note.

Del. ay. Md. ay. Virga. ay. N. C. no. S. C. divd. Geo. ay.

Mr. Randolph moved that the last sentence "each member shall have one vote," be postponed.

It was observed that this could not be necessary; as in case the sanction as to originating money bills should not be reinstated, and a revision of the Constitution should ensue, it wd. still be proper that the members should vote per Capita. A postponement of the preceding sentence allowing to each State 2 members wd. have been more proper

Mr. Mason, did not mean to propose a change of this mode of voting per capita in any event. But as there might be other modes proposed, he saw no impropriety in postponing the sentence. Each State may have two members, and yet may have unequal votes. He said that unless the exclusive originating of money bills should be restored to the House of Representatives, he should, not from obstinacy but duty and conscience, oppose throughout the equality of Representation in the Senate.

Mr. Govr. Morris. Such declarations were he supposed, addressed to the smaller States in order to alarm them for their equality in the Senate, and induce them agst. their judgments, to concur in restoring the section concerning money bills. He would declare in his turn that as he saw no prospect of amending the Constitution of the Senate & considered the section relating to money bills as intrinsically bad, he would adhere to the section establishing the equality at all events.

Mr Wilson. It seems to have been supposed by some that the section concerning money bills is desirable to the large States. The fact was that two of those States (P^a^ & V^a^) had uniformly voted, ag^st^ it without reference to any other part of the system.

Mr Randolph, urged as Col. Mason had done that the sentence under consideration was connected with that relating to Money bills, and might possibly be affected by the result of the motion for reconsidering the latter. That the postponement was therefore not improper.

Question for postponing "each member shall have one vote,"

N. H. div^d^ Mass. no. C^t^ no. N. J. no. P^a^ no. Del. no. M^d^ no. V^a^ ay. N. C. ay. S. C. no. Geo. no.

The words were then agreed to as part of the section.

Mr Randolph then gave notice that he should move to reconsider this whole Sect: 1. Art. V. as connected with the 5. Sect. Art. IV. as to which he had already given such notice.

Art. V. Sect. 2^d^ taken up.

Mr Govr Morris moved to insert after the words, "immediately after," the following "they shall be assembled in consequence of," which was agreed to nem. con. as was then the whole sect. 2.

Art: V. Sect. 3. taken up.

Mr Govr Morris moved to insert 14 instead of 4 years citizenship as a qualification for Senators: urging the danger of admitting strangers into our public Councils. Mr Pinkney 2^d^ him

Mr Elseworth, was opposed to the motion as discouraging meritorious aliens from emigrating to this Country.

Mr Pinkney. As the Senate is to have the power of making treaties & managing our foreign affairs, there is peculiar danger and impropriety in opening its door to those who have foreign attachments. He quoted the jealousy of the Athenians on this subject who made it death for any stranger to intrude his voice into their Legislative proceedings.

Col. Mason highly approved of the policy of the motion. Were it not that many not natives of this Country had acquired great merit during the revolution, he should be for restraining the eligibility into the Senate, to natives.

Mr Madison was not averse to some restrictions on this subject; but could never agree to the proposed amendment. He thought any restriction however in the *Constitution* unnecessary, and improper, unnecessary; because the Natl Legislre is to have the right of regulating naturalization, and can by virtue thereof fix different periods of residence or conditions of enjoying different privileges of Citizenship: Improper; because it will give a tincture of illiberality to the Constitution: because it will put it out of the power of the Natl Legislature even by special acts of naturalization to confer the full rank of Citizens on meritorious strangers & because it will discourage the most desirable class of people from emigrating to the U. S. Should the proposed Constitution have the intended effect of giving stability & reputation to

our Govts great numbers of respectable Europeans; men who love liberty and wish to partake its blessings, will be ready to transfer their fortunes hither. All such would feel the mortification of being marked with suspicious incapacitations though they sd not covet the public honors. He was not apprehensive that any dangerous number of strangers would be appointed by the State Legislatures, if they were left at liberty to do so: nor that foreign powers would make use of strangers as instruments for their purposes. Their bribes would be expended on men whose circumstances would rather stifle than excite jealousy & watchfulness in the public.

Mr Butler was decidedly opposed to the admission of foreigners without a long residence in the Country. They bring with them, not only attachments to other Countries; but ideas of Govt so distinct from ours that in every point of view they are dangerous. He acknowledged that if he himself had been called into public life within a short time after his coming to America, his foreign habits opinions & attachments would have rendered him an improper agent in public affairs. He mentioned the great strictness observed in Great Britain on this subject.

Docr Franklin was not against a reasonable time, but should be very sorry to see any thing like illiberality inserted in the Constitution. The people in Europe are friendly to this Country. Even in the Country with which we have been lately at war, we have now & had during the war, a great many friends not only among the people at large but in

both houses of Parliament. In every other Country in Europe all the people are our friends. We found in the course of the Revolution, that many strangers served us faithfully, and that many natives took part agst their Country. When foreigners after looking about for some other Country in which they can obtain more happiness, give a preference to ours, it is a proof of attachment which ought to excite our confidence & affection.

Mr Randolph did not know but it might be problematical whether emigrations to this Country were on the whole useful or not: but he could never agree to the motion for disabling them for 14 years to participate in the public honours. He reminded the Convention of the language held by our patriots during the Revolution, and the principles laid down in all our American Constitutions. Many foreigners may have fixed their fortunes among us under the faith of these invitations. All persons under this description, with all others who would be affected by such a regulation, would enlist themselves under the banners of hostility to the proposed System. He would go as far as seven years, but no further.

Mr Wilson said he rose with feelings which were perhaps peculiar; mentioning the circumstance of his not being a native, and the possibility, if the ideas of some gentlemen should be pursued, of his being incapacitated from holding a place under the very Constitution, which he had shared in the trust of making. He remarked the illiberal complexion which the motion would give to the System & the

effect which a good system would have in inviting meritorious foreigners among us, and the discouragement & mortification they must feel from the degrading discrimination now proposed. He had himself experienced this mortification. On his removal into Maryland, he found himself, from defect of residence, under certain legal incapacities which never ceased to produce chagrin, though he assuredly did not desire & would not have accepted the offices to which they related. To be appointed to a place may be matter of indifference. To be incapable of being appointed, is a circumstance grating and mortifying.

Mr Govr Morris. The lesson we are taught is that we should be governed as much by our reason, and as little by our feelings as possible. What is the language of Reason on this subject? That we should not be polite at the expence of prudence. There was a moderation in all things. It is said that some tribes of Indians, carried their hospitality so far as to offer to strangers their wives & daughters. Was this a proper model for us? He would admit them to his house, he would invite them to his table, would provide for them comfortable lodgings; but would not carry the complaisance so far as, to bed them with his wife. He would let them worship at the same altar, but did not choose to make Priests of them. He ran over the privileges which emigrants would enjoy among us, though they should be deprived of that of being eligible to the great offices of Government; observing that they exceeded the

privileges allowed to foreigners in any part of the world; and that as every Society from a great nation down to a club had the right of declaring the conditions on which new members should be admitted, there could be no room for complaint. As to those philosophical gentlemen, those Citizens of the World as they called themselves, He owned he did not wish to see any of them in our public Councils. He would not trust them. The men who can shake off their attachments to their own Country can never love any other. These attachments are the wholesome prejudices which uphold all Governments. Admit a Frenchman into your Senate, and he will study to increase the commerce of France: an Englishman, he will feel an equal bias in favor of that of England. It has been said that The Legislatures will not chuse foreigners, at least improper ones. There was no knowing what Legislatures would do. Some appointments made by them, proved that every thing ought to be apprehended from the cabals practised on such occasions. He mentioned the case of a foreigner who left this State in disgrace, and worked himself into an appointment from another to Congress.

Question on the motion of Mr Govr Morris to insert 14 in place of 4 years

N. H. ay. Mass. no. C^{t} no. N. J. ay. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. ay. Geo. ay.

On 13 years, moved by Mr Govr Morris

N. H. ay. Mass. no. C^{t} no. N. J. ay. P^{a} no.

Del. no. Md no. Va no. N. C. no. S. C. ay. Geo. ay.

On 10 years moved by Genl Pinkney

N. H. ay. Mass. no. Ct no. N. J. ay. Pa no. Del. no. Md no. Va no. N. C. ay. S. C. ay. Geo. ay.

Dr Franklin reminded the Convention that it did not follow from an omission to insert the restriction in the Constitution that the persons in question wd be actually chosen into the Legislature.

Mr Rutlidge. 7 years of Citizenship have been required for the House of Representatives. Surely a longer time is requisite for the Senate, which will have more power.

Mr Williamson. It is more necessary to guard the Senate in this case than the other House. Bribery & cabal can be more easily practised in the choice of the Senate which is to be made by the Legislatures composed of a few men, than of the House of Represents who will be chosen by the people.

Mr Randolph will agree to 9 years with the expectation that it will be reduced to seven if Mr Wilson's motion to reconsider the vote fixing 7 years for the House of Representatives should produce a reduction of that period.

On a question for 9 years

N. H. ay. Mass. no. Ct no. N. J. ay. Pa no. Del. ay. Md no. Va ay. N. C. divd S. C. ay. Geo. ay.

The term "Resident" was struck out, & "inhabitant" inserted nem. con.

Art. V. Sect. 3. as amended agreed to nem. con.

Sect. 4. agreed to nem. con.

Article VI. Sect. 1. taken up.

Mr Madison & Mr Govr Morris moved to strike out "each House" & to insert "the House of Representatives;" the right of the Legislatures to regulate the times & places &c in the election of Senators being involved in the right of appointing them, which was disagreed to.

Division of the question being called, it was taken on the first part down to "but their provisions concerning &c."

The first part was agreed to nem. con.

Mr Pinkney & Mr Rutlidge moved to strike out the remaining part viz but their provisions concerning them may at any time be altered by the Legislature of the United States. The States they contended could & must be relied on in such cases.

Mr Ghorum. It would be as improper take this power from the Natl Legislature, as to Restrain the British Parliament from regulating the circumstances of elections, leaving this business to the Counties themselves—

Mr Madison. The necessity of a Genl Govt sup-

[1] Madison wrote to Jefferson, July 18:

"I have taken lengthy notes of everything that has yet passed, and mean to go on with the drudgery, if no indisposition obliges me to discontinue it. It is not possible to form any judgment of the future duration of the Session. I am led by sundry circumstances to guess that the residue of the work will not be very quickly despatched. The public mind is very impatient for ye event, and various reports are circulating which tend to inflame curiosity. I do not learn however that any discontent is expressed at the concealment; and have

poses that the State Legislatures will sometimes fail or refuse to consult the common interest at the expence of their local conveniency or prejudices. The policy of referring the appointment of the House of Representatives to the people and not to the Legislatures of the States, supposes that the result will be somewhat influenced by the mode. This view of the question seems to decide that the Legislatures of the States ought not to have the uncontrouled right of regulating the times places & manner of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. Whether the electors should vote by ballot or viva voce, should assemble at this place or that place; should be divided into districts or all meet at one place, sh[d] all vote for all the representatives; or all in a district vote for a number allotted to the district; these & many other points would depend on the Legislatures, and might materially affect the appointments. Whenever the State Legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the Representation in the Legislatures of particular States, would produce a like inequality in their representation in the Nat[l] Legislature, as it was presumable that the Counties having the power in the former

little doubt that the people will be as ready to receive as we shall be able to propose, a Government that will secure their liberties & happiness."—Mad. MSS.

case would secure it to themselves in the latter. What danger could there be in giving a controuling power to the Nat! Legislature? Of whom was it to consist? 1. of a Senate to be chosen by the State Legislatures. If the latter therefore could be trusted, their representatives could not be dangerous. 2. of Representatives elected by the same people who elect the State Legislatures; Surely then if confidence is due to the latter, it must be due to the former. It seemed as improper in principle, though it might be less inconvenient in practice, to give to the State Legislatures this great authority over the election of the Representatives of the people in the Gen! Legislature, as it would be to give to the latter a like power over the election of their Representatives in the State Legislatures.

M! King. If this power be not given to the Nat! Legislature, their right of judging of the returns of their members may be frustrated. No probability has been suggested of its being abused by them. Altho this scheme of erecting the Gen! Gov! on the authority of the State Legislatures has been fatal to the federal establishment, it would seem as if many gentlemen, still foster the dangerous idea.

M! Gov! Morris observed that the States might make false returns and then make no provisions for new elections.

M! Sherman did not know but it might be best to retain the clause, though he had himself sufficient confidence in the State Legislatures. The motion of M! P. & M! R. did not prevail

The word "respectively" was inserted after the word "State."

On the motion of Mr. Read the word "their" was struck out, & "regulations in such cases" inserted in place of "provisions concerning them" the clause then reading—"but regulations in each of the foregoing cases may at any time, be made or altered by the Legislature of the U. S." This was meant to give the Natl. Legislature a power not only to alter the provisions of the States, but to make regulations in case the States should fail or refuse altogether.

Art. VI. Sect. 1. as thus amended was agreed to nem. con.

Adjourned.

FRIDAY AUGST. 10. IN CONVENTION

Art. VI. Sect. 2. taken up.

Mr. Pinkney. The Committee as he had conceived were instructed to report the proper qualifications of property for the members of the Natl. Legislature; instead of which they have referred the task to the Natl. Legislature itself. Should it be left on this footing, the first Legislature will meet without any particular qualifications of property; and if it should happen to consist of rich men they might fix such qualifications as may be too favorable to the rich; if of poor men, an opposite extreme might be run into. He was opposed to the establishment of an undue aristocratic influence in the Constitution

but he thought it essential that the members of the Legislature, the Executive, and the Judges, should be possessed of competent property to make them independent & respectable. It was prudent when such great powers were to be trusted to connect the tie of property with that of reputation in securing a faithful administration. The Legislature would have the fate of the Nation put into their hands. The President would also have a very great influence on it. The Judges would have not only important causes between Citizen & Citizen but also where foreigners are concerned. They will even be the Umpires between the U. States and individual States as well as between one State & another. Were he to fix the quantum of property which should be required, he should not think of less than one hundred thousand dollars for the President, half of that sum for each of the Judges, and in like proportion for the members of the Nat[l] Legislature. He would however leave the sums blank. His motion was that the President of the U. S. the Judges, and members of the Legislature should be required to swear that they were respectively possessed of a cleared unincumbered Estate to the amount of —— in the case of the President &c &c.

M[r] Rutlidge seconded the motion, observing that the Committee had reported no qualifications because they could not agree on any among themselves, being embarrassed by the danger on one side of displeasing the people by making them high, and on the other of rendering them nugatory by making them low.

Mr Elseworth. The different circumstances of different parts of the U. S. and the probable difference between the present and future circumstances of the whole, render it improper to have either *uniform* or *fixed* qualifications. Make them so high as to be useful in the S. States, and they will be inapplicable to the E. States. Suit them to the latter, and they will serve no purpose in the former. In like manner what may be accommodated to the existing State of things among us, may be very inconvenient in some future state of them. He thought for these reasons that it was better to leave this matter to the Legislative discretion than to attempt a provision for it in the Constitution.

Doctr Franklin expressed his dislike of every thing that tended to debase the spirit of the common people. If honesty was often the companion of wealth, and if poverty was exposed to peculiar temptation, it was not less true that the possession of property increased the desire of more property. Some of the greatest rogues he was ever acquainted with, were the richest rogues. We should remember the character which the Scripture requires in Rulers, that they should be men hating covetousness. This Constitution will be much read and attended to in Europe, and if it should betray a great partiality to the rich will not only hurt us in the esteem of the most liberal and enlightened men there, but discourage the common people from removing to this Country.

The Motion of Mr Pinkney was rejected by so general a *no*, that the States were not called.

Mr Madison was opposed to the Section as vesting an improper & dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Gov^t^ and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorized to elect. In all cases where the representatives of the people will have a personal interest distinct from that of their Constituents, there was the same reason for being jealous of them, as there was for relying on them with full confidence, when they had a common interest. This was one of the former cases. It was as improper as to allow them to fix their own wages, or their own privileges. It was a power also which might be made subservient to the views of one faction ag^st^ another. Qualifications founded on artificial distinctions may be devised, by the stronger in order to keep out partizans of a weaker faction.

Mr Elseworth, admitted that the power was not unexceptionable; but he could not view it as dangerous. Such a power with regard to the electors would be dangerous because it would be much more liable to abuse.

Mr Govr Morris moved to strike out "with regard to property" in order to leave the Legislature entirely at large.

Mr Williamson. This would surely never be ad-

mitted. Should a majority of the Legislature be composed of any particular description of men, of lawyers for example, which is no improbable supposition, the future elections might be secured to their own body.

Mr Madison observed that the British Parliam^t^ possessed the power of regulating the qualifications both of the electors, and the elected; and the abuse they had made of it was a lesson worthy of our attention. They had made the changes in both cases subservient to their own views, or to the views of political or Religious parties.

Question on the motion to strike out with regard to property

N. H. no. Mass. no. C^t^ ay. N. J. ay. P^a^ ay Del.[1] no. M^d^ no. V^a^ no. N. C. no. S. C. no Geo. ay.

Mr Rutlidge was opposed to leaving the power to the Legislature—He proposed that the qualifications should be the same as for members of the State Legislatures.

Mr Wilson thought it would be best on the whole to let the Section go out. A uniform rule would probably never be fixed by the Legislature, and this particular power would constructively exclude every other power of regulating qualifications.

On the question for agreeing to Art. VI. Sect. 2^d^

N. H. ay. Mass. ay. C^t^ no. N. J. no. P^a^ no. M^d^ no. V^a^ no. N. C. no. S. C. no. Geo. ay.

On motion of Mr Wilson to reconsider Art: IV.

[1] In the printed Journal Delaware did not vote.—Madison's note.

Sect. 2; so as to restore 3 in place of seven years of citizenship as a qualification for being elected into the House of Represent[s]

N. H. no. Mass. no. C[t] ay. N. J. no. P[a] ay. Del. ay. M[d] ay. V[a] ay. N. C. ay. S. C. no. Geo. no.

Monday next was then assigned for the reconsideration; all the States being ay. except Mass[ts] & Georgia

Art: VI. Sect. 3. taken up.

M[r] Ghorum contended that less than a majority in each House should be made a Quorum, otherwise great delay might happen in business, and great inconvenience from the future increase of numbers.

M[r] Mercer was also for less than a majority. So great a number will put it in the power of a few by seceding at a critical moment to introduce convulsions, and endanger the Governm[t] Examples of secession have already happened in some of the States. He was for leaving it to the Legislature to fix the Quorum, as in Great Britain, where the requisite number is small & no inconveniency has been experienced.

Col. Mason. This is a valuable & necessary part of the plan. In this extended Country, embracing so great a diversity of interests, it would be dangerous to the distant parts to allow a small number of members of the two Houses to make laws. The Central States could always take care to be on the Spot and by meeting earlier than the distant ones, or wearying their patience, and outstaying them,

could carry such measures as they pleased. He admitted that inconveniences might spring from the secession of a small number; But he had also known good produced by an apprehension, of it. He had known a paper emission prevented by that cause in Virginia. He thought the Constitution as now moulded was founded on sound principles, and was disposed to put into it extensive powers. At the same time he wished to guard agst abuses as much as possible. If the Legislature should be able to reduce the number at all, it might reduce it as low as it pleased & the U. States might be governed by a Juncto—A majority of the number which had been agreed on, was so few that he feared it would be made an objection agst the plan.

Mr King admitted there might be some danger of giving an advantage to the Central States; but he was of opinion that the public inconveniency on the other side was more to be dreaded.

Mr Govr Morris moved to fix the quorum at 33 members in the H. of Rep^{s} & 14 in the Senate. This is a majority of the present number, and will be a bar to the Legislature: fix the number low and they will generally attend knowing that advantage may be taken of their absence, the Secession of a small number ought not to be suffered to break a quorum. Such events in the States may have been of little consequence. In the national Councils they may be fatal. Besides other mischiefs, if a few can break up a quorum, they may seize a moment when a particular part of the Continent may be in need of im-

mediate aid, to extort, by threatening a secession, some unjust & selfish measure.

Mr Mercer 2^ded^ the motion.

Mr King said he had just prepared a motion which instead of fixing the numbers proposed by Mr Govr Morris as Quorums, made those the lowest numbers, leaving the Legislature at liberty to increase them or not. He thought the future increase of members would render a majority of the whole extremely cumbersome.

Mr Mercer agreed to substitute Mr King's motion in place of Mr Morris's.

Mr Elseworth was opposed to it. It would be a pleasing ground of confidence to the people that no law or burden could be imposed on them by a few men. He reminded the movers that the Constitution proposed to give such a discretion with regard to the number of Representatives that a very inconvenient number was not to be apprehended. The inconveniency of secessions may be guarded ag^st^ by giving to each House an authority to require the attendance of absent members.

Mr Wilson concurred in the sentiments of Mr Elseworth.

Mr Gerry seemed to think that some further precautions than merely fixing the quorum might be necessary. He observed that as 17 w^d^ be a majority of a quorum of 33, and 8 of 14, questions might by possibility be carried in the H. of Rep^s^ by 2 large States, and in the Senate by the same States with the aid of two small ones.—He proposed that the num-

ber for a quorum in the H. of Rep^{s} should not exceed 50, nor be less than 33, leaving the intermediate discretion to the Legislature.

Mr King. As the quorum could not be altered with^{t} the concurrence of the President by less than ⅔ of each House, he thought there could be no danger in trusting the Legislature.

Mr Carrol This would be no security agst a continuance of the quorums at 33 & 14. when they ought to be increased.

On question on Mr Kings motion "that not less than 33 in the H. of Rep^{s} nor less than 14 in the Senate sh^{d} constitute a Quroum which may be increased by a law, on additions of the members in either House.

N. H. no. Mass. ay. C^{t} no. N. J. no. P^{a} no. Del. ay. M^{d} no. V^{a} no. N. C. no. S. C. no. Geo. no.

Mr Randolph & Mr Madison moved to add to the end of Art. VI. Sect. 3, "and may be authorized to compel the attendance of absent members in such manner & under such penalties as each House may provide." Agreed to by all except Pen^{a} which was divided.

Art. VI. Sect. 3. agreed to as amended nem. con.

Sect. 4. } Agreed to nem. con.
Sect. 5. }

Mr Madison observed that the right of expulsion (Art. VI. Sect. 6.) was too important to be exercised by a bare majority of a quorum: and in emergencies of faction might be dangerously abused. He moved

that, "with the concurrence of $\frac{2}{3}$," might be inserted between may & expel.

Mr Randolph & Mr Mason approved the idea.

Mr Govr Morris. This power may be safely trusted to a majority. To require more may produce abuses on the side of the minority. A few men from factious motives may keep in a member who ought to be expelled.

Mr Carrol thought that the concurrence of $\frac{3}{4}$ at least ought to be required.

On the question requiring $\frac{2}{3}$ in cases of expelling a member.

N. H. ay. Mass. ay. C^{t} ay. N. J. ay. P^{a} div^{d} Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

Art. VI. Sect. 6. as thus amended agreed to nem. con.

Art: VI. Sect. 7. taken up.

Mr Govr Morris urged that if the yeas & nays were proper at all any individual ought to be authorized to call for them; and moved an amendment to that effect.—The small States may otherwise be under a disadvantage, and find it difficult to get a concurrence of $\frac{1}{5}$.

Mr Randolph 2^{ded} y^{e} motion.

Mr Sherman had rather strike out the yeas & nays altogether. They never have done any good, and have done much mischief. They are not proper as the reasons governing the voter never appear along with them.

Mr Elseworth was of the same opinion.

Col. Mason liked the Section as it stood. it was a middle way between two extremes.

Mr. Ghorum was opposed to the motion for allowing a single member to call the yeas & nays, and recited the abuses of it in Masts. 1 in stuffing the journals with them on frivolous occasions. 2 in misleading the people who never know the reasons determing the votes.

The motion for allowing a single member to call the yeas & nays was disagd. to nem. con.

Mr. Carrol. & Mr. Randolph moved to strike out the words, "each House" and to insert the words, "the House of Representatives" in Sect. 7. Art. 6. and to add to the section the words "and any member of the Senate shall be at liberty to enter his dissent."

Mr. Govr. Morris & Mr. Wilson observed that if the minority were to have a right to enter their votes & reasons, the other side would have a right to complain, if it were not extended to them: & to allow it to both, would fill the Journals, like the records of a Court, with replications, rejoinders &c.

Question on Mr. Carrols motion to allow a member to enter his dissent

N. H. no. Mass. no. Cont. no. N. J. no. Pa. no. Del. no. Md. ay. Va. ay. N. C. no. S. C. ay. Geo. ay.

Mr. Gerry moved to strike out the words "when it shall be acting in its legislative capacity" in order to extend the provision to the Senate when exercising its peculiar authorities and to insert "except such parts thereof as in their judgment require secrecy"

after the words "publish them."—(It was thought by others that provision should be made with respect to these when that part came under consideration which proposed to vest those additional authorities in the Senate.)

On this question for striking out the words "when acting in its legislative capacity"

N. H. div^{d} Mass. ay. C^{t} no. N. J. no. P^{a} no. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

Adjourned.

SATURDAY AUGST 11 IN CONVENTION

Mr Madison & Mr Rutlidge moved "that each House shall keep a journal of its proceedings, & shall publish the same from time to time; except such part of the proceedings of the Senate, when acting not in its Legislative capacity as may be judged by that House to require secrecy."

Mr Mercer. This implies that other powers than legislative will be given to the Senate which he hoped would not be given.

Mr Madison & M^{r} R's motion was disag^{d} to by all the States except Virg^{a}

Mr Gerry & Mr Sharman moved to insert after the words "publish them" the following "except such as relate to treaties & military operations." Their object was to give each House a discretion in such cases.—On this question

N. H. no. Mass. ay. Ct. ay. N. J. no. Pa. no. Del. no. Va. no. N. C. no. S. C. no. Geo. no.

Mr. Elseworth. As the clause is objectionable in so many shapes, it may as well be struck out altogether. The Legislature will not fail to publish their proceedings from time to time. The people will call for it if it should be improperly omitted.

Mr. Wilson thought the expunging of the clause would be very improper. The people have a right to know what their Agents are doing or have done, and it should not be in the option of the Legislature to conceal their proceedings. Besides as this is a clause in the existing confederation, the not retaining it would furnish the adversaries of the reform with a pretext by which weak & suspicious minds may be easily misled.

Mr. Mason thought it would give a just alarm to the people, to make a conclave of their Legislature.

Mr. Sherman thought the Legislature might be trusted in this case if in any.

Question on 1st part of the section down to "*publish them*" inclusive: Agreed to nem. con.

Question on the words to follow, to wit "except such parts thereof as may in their Judgment require secrecy." N. H. divd. Mass. ay. Ct. ay. N. J. ay. Pa. no. Del. no. Md. no. Va. ay. N. C. ay. S. C. no. Geo. ay.

The remaining part as to yeas & nays,—agreed to nem. con.

Art VI. Sect. 8. taken up.

Mr. King remarked that the section authorized the

2 Houses to adjourn to a new place. He thought this inconvenient. The mutability of place had dishonored the federal Govt and would require as strong a cure as we could devise. He thought a law at least should be made necessary to a removal of the Seat of Govt

Mr Madison viewed the subject in the same light, and joined with Mr King in a motion requiring a law.

Mr. Govern^r Morris proposed the additional alteration by inserting the words, "during the Session" &c.

Mr Spaight. This will fix the seat of Govt at N. Y. The present Congress will convene them there in the first instance, and they will never be able to remove, especially if the Presidt should be [a] Northern Man.

Mr Govr Morris such a distrust is inconsistent with all Govt

Mr Madison supposed that a central place for the seat of Govt was so just and wd be so much insisted on by the H. of Representatives, that though a law should be made requisite for the purpose, it could & would be obtained. The necessity of a central residence of the Govt wd be much greater under the new than old Govt The members of the new Govt wd be more numerous. They would be taken more from the interior parts of the States; they wd not like members of ye present Congs come so often from the distant States by water. As the powers & objects of the new Govt would be far greater yn heretofore, more private individuals wd have business calling them to the seat of it, and it was more necessary

that the Gov^t^ should be in that position from which it could contemplate with the most equal eye, and sympathize most equally with, every part of the nation. These considerations he supposed would extort a removal even if a law were made necessary. But in order to quiet suspicions both within & without doors, it might not be amiss to authorize the 2 Houses by a concurrent vote to adjourn at their first meeting to the most proper place, and to require thereafter, the sanction of a law to their removal.

The motion was accordingly moulded into the following form: "the Legislature shall at their first assembling determine on a place at which their future sessions shall be held; neither House shall afterwards, during the session of the House of Rep^s^ without the consent of the other, adjourn for more than three days, nor shall they adjourn to any other place than such as shall have been fixt by law."

Mr Gerry thought it would be wrong to let the Presid^t^ check the will of the 2 Houses on this subject at all.

Mr Williamson supported the ideas of Mr Spaight.

Mr Carrol was actuated by the same apprehensions.

Mr Mercer, it will serve no purpose to require the two Houses at their first meeting to fix on a place. They will never agree.

After some further expressions from others denoting an apprehension that the seat of Gov^t^ might be continued at an improper place if a law should be made necessary to a removal, and the motion above

stated with another for recommitting the section had been negatived, the section was left in the shape it which it was reported as to this point. The words, "during the session of the Legislature were prefixed to the 8th section—and the last sentence "But this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the —— article" struck out. The 8th section as amended was then agreed to.

Mr Randolph moved according to notice to reconsider Art: IV. Sect. 5. concerning money bills which had been struck out. He argued 1. that he had not wished for this privilege whilst a proportional Representation in the Senate was in contemplation, but since an equality had been fixed in that house, the large States would require this compensation at least. 2. that it would make the plan more acceptable to the people, because they will consider the Senate as the more aristocratic body, and will expect that the usual guards agst its influence be provided according to the example in G. Britain. 3. the privilege will give some advantage to the House of Reps if it extends to the originating only—but still more if it restrains the Senate from amendg 4. he called on the smaller States to concur in the measure, as the condition by which alone the compromise had entitled them to an equality in the Senate. He signified that he should propose instead of the original section, a clause specifying that the bills in question should be for the purpose of Revenue, in order to repel ye objection agst the extent of the words, "*rais-*

ing money," which might happen incidentally, and that the Senate should not so amend or alter as to increase or diminish the sum; in order to obviate the inconveniences urged agst a restriction of the Senate to a simple affirmation or negative.

Mr Williamson 2^{ded} the motion.

Mr Pinkney was sorry to oppose the opportunity gentlemen asked to have the question again opened for discussion, but as he considered it a mere waste of time he could not bring himself to consent to it. He said that notwithstanding what had been said as to the compromise, he always considered this section as making no part of it. The rule of Representation in the 1st branch was the true condition of that in the 2^{d} branch.—Several others spoke for & agst the reconsideration, but without going into the merits.—On the Question to reconsider

N. H. ay. Mass. ay. C^{t} ay. N. J.[1] ay. P^{a} ay. Del. ay. M^{d} no. V^{a} ay. N. C. ay. S. C. div^{d} Geo. ay.—Monday was then assigned—

Adj^{d} [2]

[1] In the printed Journal N. Jersey—no.—Madison's note.

[2] The next day being Sunday, Madison wrote to his father:

"PHILAD^{A} Augst 12, 1787.

"HON^{D} SIR

"I wrote to you lately inclosing a few newspapers. I now send a few more, not because they are interesting but because they may supply the want of intelligence that might be more so. The Convention reassembled at the time my last mentioned that they had adjourned to. It is not possible yet to determine the period to which the Session will be spun out. It must be some weeks from this date at least, and possibly may be computed by months. Eleven states are on the ground, and have generally been so since the second or third week of the Session. Rhode Island is one of the absent States. She has never yet appointed deputies. N. H. till of late was the

MONDAY, AUGST 13. IN CONVENTION

Art. IV. Sect. 2. reconsidered—

Mr Wilson & Mr Randolph moved to strike out "7 years" and insert "4 years," as the requisite term of Citizenship to qualify for the House of Rep^{s} Mr Wilson said it was very proper the electors should govern themselves by this consideration; but unnecessary & improper that the Constitution should chain them down to it.

Mr Gerry wished that in future the eligibility might be confined to Natives. Foreign powers will intermeddle in our affairs, and spare no expence to influence them. Persons having foreign attachments

other. That State is now represented. But just before the arrival of her deputies, those of N. York left us.—We have till within a few days had very cool weather. It is now pleasant, after a fine rain. Our acc^{ts} from Virg^{a} give us but an imperfect idea of the prospects with you. In particular places the drouth we hear has been dreadful. Genl Washington's neighbourhood is among the most suffering of them. I wish to know how your neighbourhood is off. But my chief anxiety is to hear that your health is re-established. The hope that this may procure me that information is the principal motive for writing it, having as you will readily see not been led to it by any thing worth communicating. With my love to my mother & the rest of the family I remain Dear Sir

"Y^{r} aff^{t} son."

(Mad. MSS.)

Edward Carrington wrote to Madison from New York, August 11, showing the solicitude of federalist members of Congress:

" . . . The President has been requested to write to the states unrepresented, pressing upon them the objects which require the attendance of their delegations, & urging them to come forward, amongst the objects is that of the report of the convention, which, it is supposed, is now in the State of parturition—this bantling must receive the blessing of Congress this session, or, I fear, it will expire before the new one will assemble; every experiment has its critical

will be sent among us & insinuated into our councils, in order to be made instruments for their purposes. Every one knows the vast sums laid out in Europe for secret services. He was not singular in these ideas. A great many of the most influential men in Mass^{ts} reasoned in the same manner.

Mr Williamson moved to insert 9 years instead of seven. He wished this Country to acquire as fast as possible national habits. Wealthy emigrants do more harm by their luxurious examples, than good, by the money, they bring with them.

Col. Hamilton was in general agst embarrassing the Gov^{t} with minute restrictions. There was on one

stages which must be taken as they occur, or the whole will fail—the peoples expectations are rising with the progress of this work, but will desert it, should it remain long with Congress—permit me to suggest one idea as to the mode of obtaining the accession of the States to the new plan of government—let the convention appoint *one* day, say the 1st of May, upon which a convention appointed by the people shall be held in each state, for the purpose of accepting or rejecting in toto, the project—supposing an act of the ordinary legislatures to be equally authentic, which would not be true, yet many reasons present themselves in favor of—special conventions—many men would be admitted who are excluded from the legislatures—the business would be taken up unclogged with any other—and it would effectually call the attention of all the people to the object as seriously affecting them. All the States being in convention at the same time, opportunities of speculating upon the views of each other would be cut off—the project should be decided upon without an attempt to alter it—you have doubtless found it difficult to reconcile the different opinions in your body—will it not be impossible then, to reconcile those which will arise amongst numerous assemblies in the different states? it is possible there never may be a general consent to the project as it goes out; but it is absolutely certain there will never be an agreement in amendments. It is the lot of but few to be able to discern the remote principles upon which their happiness & prosperity essentially depend—."—(Mad. MSS.)

side the possible danger that had been suggested. On the other side, the advantage of encouraging foreigners was obvious & admitted. Persons in Europe of moderate fortunes will be fond of coming here where they will be on a level with the first Citizens. He moved that the section be so altered as to require merely citizenship & inhabitancy. The right of determining the rule of naturalization will then leave a discretion to the Legislature on this subject which will answer every purpose.

Mr Madison seconded the motion. He wished to maintain the character of liberality which had been professed in all the Constitutions & publications of America. He wished to invite foreigners of merit & republican principles among us. America was indebted to emigration for her settlement & Prosperity. That part of America which had encouraged them most had advanced most rapidly in population, agriculture & the arts. There was a possible danger he admitted that men with foreign predilections might obtain appointments but it was by no means probable that it would happen in any dangerous degree. For the same reason that they would be attached to their native Country, our own people wd prefer natives of this Country to them. Experience proved this to be the case. Instances were rare of a foreigner being elected by the people within any short space after his coming among us. If bribery was to be practised by foreign powers, it would not be attempted among the electors but among the elected, and among natives having full Confidence

of the people not among strangers who would be regarded with a jealous eye.

Mr Wilson cited Pennsylv^a^ as a proof of the advantage of encouraging emigrations. It was perhaps the youngest (except Georgia) settlem^t^ on the Atlantic; yet it was at least among the foremost in population & prosperity. He remarked that almost all the Genl officers of the Pen^a^ line of the late army were foreigners. And no complaint had ever been made against their fidelity or merit. Three of her deputies to the Convention (Mr R. Morris, Mr Fitzsimons & himself) were also not natives. He had no objection to Col. Hamiltons motion & would withdraw the one made by himself.

Mr Butler was strenuous ag^st^ admitting foreigners into our public Councils.

Question on Col. Hamilton's Motion

N. H. no. Mass. no. C^t^ ay. N. J. no. P^a^ ay Del. no. Md. ay. V^a^ ay. N. C. no. S. C. no Geo. no.

Question on Mr Williamson's motion to insert 9 years instead of seven.

N. H. ay. Mass^ts^ no. C^t^ no. N. J. no. P^a^ no. Del. no. M^d^ no. V^a^ no. N. C. no. S. C. ay Geo. ay.

Mr Wilson renewed the motion for 4 years instead of 7; & on question

N. H. no. Mass. no. C^t^ ay. N. J. no. P^a^ no Del. no. M^d^ ay. V^a^ ay. N. C. no. S. C. no Geo. no.

Mr Govr Morris moved to add to the end of the

section (Art IV. S. 2) a proviso that the limitation of seven years should not affect the rights of any person now a Citizen.

Mr. Mercer 2ded the motion. It was necessary he said to prevent a disfranchisement of persons who had become Citizens under and on the faith & according to the laws & Constitution from being on a level in all respects with natives.

Mr. Rutlidge. It might as well be said that all qualifications are disfranchisemts and that to require the age of 25 years was a disfranchisement. The policy of the precaution was as great with regard to foreigners now Citizens; as to those who are to be naturalized in future.

Mr. Sherman. The U. States have not invited foreigners nor pledged their faith that they should enjoy equal privileges with native Citizens. The Individual States alone have done this. The former therefore are at liberty to make any discriminations they may judge requisite.

Mr. Ghorum. When foreigners are naturalized it wd seem as if they stand on an equal footing with natives. He doubted then the propriety of giving a retrospective force to the restriction.

Mr. Madison animadverted on the peculiarity of the doctrine of Mr. Sharman. It was a subtilty by which every national engagement might be evaded. By parity of reason, Whenever our public debts, or foreign treaties become inconvenient nothing more would be necessary to relieve us from them, than to new model the Constitution. It was said that the

U. S. as such have not pledged their faith to the naturalized foreigners, & therefore are not bound. Be it so, & that the States alone are bound. Who are to form the New Constitution by which the condition of that class of citizens is to be made worse than the other class? Are not the States ye Agents? will they not be the members of it? Did they not appoint this Convention? Are not they to ratify its proceedings? Will not the new Constitution be their Act? If the new Constitution then violates the faith pledged to any description of people will not the makers of it, will not the States, be the violaters. To justify the doctrine it must be said that the States can get rid of their obligation by revising the Constitution, though they could not do it by repealing the law under which foreigners held their privileges. He considered this a matter of real importance. It would expose us to the reproaches of all those who should be affected by it, reproaches which w^d^ soon be echoed from the other side of the Atlantic; and would unnecessarily enlist among the Adversaries of the reform a very considerable body of Citizens: We should moreover reduce every State to the dilemma of rejecting it or of violating the faith pledged to a part of its Citizens.

Mr Govr Morris considered the case of persons under 25 years, as very different from that of foreigners. No faith could be pleaded by the former in bar of the regulation. No assurance had ever been given that persons under that age should be in all cases on a level with those above it. But with

regard to foreigners among us, the faith had been pledged that they should enjoy the privileges of Citizens. If the restriction as to age had been confined to natives, & had left foreigners under 25 years, eligible in this case, the discrimination w^d^ have been an equal injustice on the other side.

Mr Pinkney remarked that the laws of the States had varied much the terms of naturalization in different parts of America; and contended that the U. S. could not be bound to respect them on such an occasion as the present. It was a sort of recurrence to first principles.

Col. Mason was struck not like (Mr. Madison) with the *peculiarity*, but the *propriety* of the doctrine of Mr Sharman. The States have formed different qualifications themselves, for enjoying different rights of citizenship. Greater caution w^d^ be necessary in the outset of the Gov^t^ than afterwards. All the great objects w^d^ then be provided for. Every thing would be then set in motion. If persons among us attached to G. B. should work themselves into our Councils, a turn might be given to our affairs & particularly to our Commercial regulations which might have pernicious consequences. The Great Houses of British Merchants will spare no pains to insinuate the instruments of their views into the Gov^t^.

Mr Wilson read the clause in the Constitution of Pen^a^ giving to foreigners after two years residence all the rights whatsoever of Citizens, Combined it with the article of Confederation making the Citizens

of one State Citizens of all, inferred the obligation Pen^{a} was under to maintain the faith thus pledged to her citizens of foreign birth, and the just complaints which her failure would authorize: He observed likewise that the Princes & States of Europe would avail themselves of such breach of faith to deter their subjects from emigration to the U. S.

Mr Mercer enforced the same idea of a breach of faith.

Mr Baldwin could not enter into the force of the arguments agst extending the disqualification to foreigners now Citizens. The discrimination of the place of birth, was not more objectionable than that of age which all had concurred in the propriety of.

Question on the proviso of Mr Govr Morris in favor of foreigners now Citizens

N. H. no. Mass. no. C^{t} ay. N. J. ay. P^{a} ay. Del. no. Mary^{d} ay. V^{a} ay. N. C. no. S. C. no. Geo. no.

Mr Carrol moved to insert "5 years" instead of "seven" in Sect. 2^{d} Art: IV

N. H. no. Mass. no. C^{t} ay. N. J. no. P^{a} div^{d} Del. no. M^{d} ay. V^{a} ay. N. C. no. S. C. no. Geo. no.

The Section (Art IV. Sec. 2.) as formerly amended was then agreed to nem. con.

Mr Wilson moved that (in Art: V. Sect. 3.) 9 years be reduced to seven, which was disag^{d} to and the 3^{d} section (Art. V.) confirmed by the following vote. N. H. ay. Mass. ay. C^{t} no. N. J. ay. P^{a} no. Del. ay. M^{d} no. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

Art. IV. Sec. 5. being reconsidered.

Mr Randolph moved that the clause be altered so as to read—"Bills for raising money for the *purpose of revenue* or for appropriating the same shall originate in the House of Representatives and shall not be so amended or altered by the Senate as to increase or diminish the sum to be raised, or change the mode of levying it, or the object of its appropriation."—He would not repeat his reasons, but barely remind the members from the smaller States of the compromise by which the larger States were entitled to this privilege.

Col. Mason. This amendment removes all the objections urged ag^st^ the section as it stood at first. By specifying *purposes of revenue*, it obviated the objection that the section extended to all bills under which money might incidentally arise. By authorizing amendments in the Senate it got rid of the objections that the Senate could not correct errors of any sort, & that it would introduce into the House of Rep^s^ the practice of tacking foreign matter to money bills. These objections being removed, the arguments in favor of the proposed restraint on the Senate ought to have their full force. 1. the Senate did not represent the *people*, but the *States* in their political character. It was improper therefore that it should tax the people. The reason was the same ag^st^ their doing it; as it had been ag^st^ Cong^s^ doing it. Nor was it in any respect necessary in order to cure the evils of our Republican system. He admitted that notwithstanding the superiority of the Repub-

the Parliament of Paris, the mere depository of the decrees of the Senate. As to the compromise so much had passed on that subject that he would say nothing about it. He did not mean by what he had said to oppose the permanency of the Senate. On the contrary he had no repugnance to an increase of it—nor to allowing it a negative, though the Senate was not by its present constitution entitled to it. But in all events he would contend that the purse-strings should be in the hands of the Representatives of the people.

Mr Wilson was himself directly opposed to the equality of votes granted to the Senate by its present Constitution. At the same time he wished not to multiply the vices of the system. He did not mean to enlarge on a subject which had been so much canvassed, but would remark that as an insuperable objection ag^st^ the proposed restriction of money bills to the H. of Rep^s^ that it would be a source of perpetual contentions where there was no mediator to decide them. The Presid^t^ here could not like the Executive Magistrate in England interpose by a prorogation, or dissolution. This restriction had been found pregnant with altercation in every State where the Constitution had established it. The House of Rep^s^ will insert other things in money bills, and by making them conditions of each other, destroy the deliberate liberty of the Senate. He stated the case of a Preamble to a money bill sent up by the House of Commons in the reign of Queen Anne, to the H. of Lords, in which the conduct of the displaced Minis-

try, who were to be impeached before the Lords, was condemned; the Comons thus extorting a premature judgm^t without any hearing of the Parties to be tried, and the H. of Lords being thus reduced to the poor & disgraceful expedient of opposing to the authority of a law, a protest on their Journals ag^st its being drawn into precedent. If there was any thing like Poynings law in the present case, it was in the attempt to vest the exclusive right of originating in the H. of Rep^s and so far he was ag^st it. He should be equally so if the right were to be exclusively vested in the Senate. With regard to the purse strings, it was to be observed that the purse was to have two strings, one of which was in the hands of the H. of Rep^s the other in those of the Senate. Both houses must concur in untying, and of what importance could it be which untied first, which last. He could not conceive it to be any objection to the Senate's preparing the bills, that they would have leisure for that purpose and would be in the habits of business. War, Commerce, & Revenue were the great objects of the Genl Government. All of them are connected with money. The restriction in favor of the H. of Represent^s would exclude the Senate from originating any important bills whatever—

Mr Gerry considered this as a part of the plan that would be much scrutinized. Taxation & representation are strongly associated in the minds of the people, and they will not agree that any but their immediate representatives shall meddle with their purses. In short the acceptance of the plan will

inevitably fail, if the Senate be not restrained from originating money bills.

Mr Govern^r^ Morris. All the arguments suppose the right to originate & to tax, to be exclusively vested in the Senate.—The effects commented on may be produced by a Negative only in the Senate. They can tire out the other House, and extort their concurrence in favorite measures, as well by withholding their negative, as by adhering to a bill introduced by themselves.

Mr Madison thought If the substitute offered by Mr Randolph for the original section is to be adopted it would be proper to allow the Senate at least so to amend as to *diminish* the sums to be raised. Why should they be restrained from checking the extravagance of the other House? One of the greatest evils incident to Republican Gov^t^ was the spirit of contention & faction. The proposed substitute, which in some respects lessened the objections ag^st^ the section, had a contrary effect with respect to this particular. It laid a foundation for new difficulties and disputes between the two houses. The word *revenue* was ambiguous. In many acts, particularly in the regulation of trade, the object would be twofold. The raising of revenue would be one of them. How could it be determined which was the primary or predominant one; or whether it was necessary that revenue sh^d^ be the sole object, in exclusion even of other incidental effects. When the Contest was first opened with G. B. their power to regulate trade was admitted. Their power to raise revenue rejected.

An accurate investigation of the subject afterwards proved that no line could be drawn between the two cases. The words *amend or alter* form an equal source of doubt & altercation. When an obnoxious paragraph shall be sent down from the Senate to the House of Rep^{s}, it will be called an origination under the name of an amendment. The Senate may actually couch extraneous matter under that name. In these cases, the question will turn on the *degree* of connection between the matter & object of the bill and the alteration or amendment offered to it. Can there be a more fruitful source of dispute, or a kind of dispute more difficult to be settled? His apprehensions on this point were not conjectural. Disputes had actually flowed from this source in Virg^{a} where the Senate can originate no bill. The words, "so as to *increase or diminish* the sum to be raised," were liable to the same objections. In levying indirect taxes, which it seemed to be understood were to form the principal revenue of the new Gov^{t} the sum to be raised, would be increased or diminished by a variety of collateral circumstances influencing the consumption, in general, the consumption of foreign or of domestic articles—of this or that particular species of articles and even by the mode of collection which may be closely connected with the productiveness of a tax.—The friends of the section had argued its necessity from the permanency of the Senate. He could not see how this argum^{t} applied. The Senate was not more permanent now than in the form it bore in the original propositions of M^{r}

Randolph and at the time when no objection whatever was hinted agᵗ its originating money bills. Or if in consequence of a loss of the present question, a proportional vote in the Senate should be reinstated as has been urged as the indemnification the permanency of the Senate will remain the same.—If the right to originate be vested exclusively in the House of Repˢ either the Senate must yield agᵗ its judgment to that House, in which case the Utility of the check will be lost—or the Senate will be inflexible & the H. of Repˢ must adapt its money bill to the views of the Senate, in which case, the exclusive right will be of no avail.—As to the Compromise of which so much had been said, he would make a single observation. There were 5 States which had opposed the equality of votes in the Senate, viz, Massᵗˢ Pennᵃ Virgᵃ N. Carolina & South Carolᵃ As a compensation for the sacrifice extorted from them on this head, the exclusive origination of money bills in the other House had been tendered. Of the five States a majority viz. Pennᵃ Virgᵃ & S. Carolᵃ have uniformly voted agᵗ the proposed compensation, on its own merits, as rendering the plan of Govᵗ still more objectionable. Massᵗˢ has been divided. N. Carolina alone has set a value on the compensation, and voted on that principle. What obligation then can the small States be under to concur agᵗ their judgments in reinstating the section?

Mᵗ Dickenson. Experience must be our only guide. Reason may mislead us. It was not Reason that discovered the singular & admirable mechanism

of the English Constitution. It was not Reason that discovered or ever could have discovered the odd & in the eye of those who are governed by reason, the absurd mode of trial by Jury. Accidents probably produced these discoveries, and experience has given a sanction to them. This is then our guide. And has not experience verified the utility of restraining money bills to the immediate representatives of the people. Whence the effect may have proceeded he could not say: whether from the respect with which this privilege inspired the other branches of Gov^t to the H. of Comons, or from the turn of thinking it gave to the people at large with regard to their rights, but the effect was visible & could not be doubted—Shall we oppose to this long experience, the short experience of 11 years which we had ourselves, on this subject. As to disputes, they could not be avoided any way. If both Houses should originate, each would have a different bill to which it would be attached, and for which it would contend. —He observed that all the prejudices of the people would be offended by refusing this exclusive privilege to the H. of Repres^s and these prejudices sh^d never be disregarded by us when no essential purpose was to be served. When this plan goes forth it will be attacked by the popular leaders. Aristocracy will be the watchword; the Shiboleth among its adversaries. Eight States have inserted in their Constitutions the exclusive right of originating money bills in favor of the popular branch of the Legislature. Most of them however allowed the other branch to

amend. This he thought would be proper for us to do.

Mr Randolph regarded this point as of such consequence, that as he valued the peace of this Country, he would press the adoption of it. We had numerous & monstrous difficulties to combat. Surely we ought not to increase them. When the people behold in the Senate, the countenance of an aristocracy; and in the president, the form at least of a little monarch, will not their alarms be sufficiently raised without taking from their immediate representatives, a right which has been so long appropriated to them.—The Executive will have more influence over the Senate, than over the H. of Repr. Allow the Senate to originate in this Case, & that influence will be sure to mix itself in their deliberations & plans. The Declaration of War he conceived ought not to be in the Senate composed of 26 men only, but rather in the other House. In the other House ought to be placed the origination of the means of war. As to Commercial regulations which may involve revenue, the difficulty may be avoided by restraining the definition to bills, for the *mere* or *sole*, purpose of raising revenue. The Senate will be more likely to be corrupt than the H. of Repr. and should therefore have less to do with money matters. His principal object however was to prevent popular objections against the plan, and to secure its adoption.

Mr Rutlidge. The friends of this motion are not consistent in their reasoning. They tell us that we

ought to be guided by the long experience of G. B. & not our own experience of 11 years; and yet they themselves propose to depart from it. The *H. of Comons* not only have the exclusive right of originating, but the *Lords* are not allowed to alter or amend a money bill. Will not the people say that this restriction is but a mere tub to the whale. They cannot but see that it is of no real consequence; and will be more likely to be displeased with it as an attempt to bubble them, than to impute it to a watchfulness over their rights. For his part, he would prefer giving the exclusive right to the Senate, if it was to be given exclusively at all. The Senate being more conversant in business, and having more leisure, will digest the bills much better, and as they are to have no effect, till examined & approved by the H. of Repˢ there can be no possible danger. These clauses in the Constitutions of the States had been put in through a blind adherence to the British model. If the work was to be done over now, they would be omitted. The experiment in S. Carolina, where the Senate can originate or amend money bills, has shewn that it answers no good purpose; and produces the very bad one of continually dividing & heating the two houses. Sometimes indeed if the matter of the amendment of the Senate is pleasing to the other House they wink at the encroachment; if it be displeasing, then the Constitution is appealed to. Every Session is distracted by altercations on this subject. The practice now becoming frequent is for the Senate not to make

formal amendments; but to send down a schedule of the alterations which will procure the bill their assent.

Mr. Carrol. The most ingenious men in Maryd are puzzled to define the case of money bills, or explain the Constitution on that point, tho' it seemed to be worded with all possible plainness & precision. It is a source of continual difficulty & squabble between the two houses.

Mr. McHenry [1] mentioned an instance of extraordinary subterfuge, to get rid of the apparent force of the Constitution.

On Question on the first part of the motion as to the exclusive originating of Money bills in the H. of Repr. N. H. ay. Mass. ay. Ct. no. N. J. no. Pa. no. Del. no. Md. no. Virga. ay. Mr. Blair & Mr. M. no. Mr. R, Col. Mason and Genl. Washington [2] ay. N. C. ay. S. C. no. Geo. no.

Question on Originating by H. of Repr. & *amending* by Senate, as reported Art IV. Sect. 5.

N. H. ay. Mass. ay. Ct. no. N. J. no. Pa. no.

[1] "Mr. McHenry was bred a physician, but he afterwards turned Soldier and acted as Aid to Genl. Washington and the Marquis de la Fayette. He is a Man of Specious talents, with nothing of genious to improve them. As a politician there is nothing remarkable in him, nor has he any of the graces of the Orator. He is however, a very respectable young Gentleman, and deserves the honor which his country has bestowed on him. Mr. McHenry is about 32 years of age." —Pierce's Notes, *Am. Hist. Rev.*, iii., 330.

[2] He disapproved & till now voted agst the exclusive privilege, he gave up his judgment he said because it was not of very material weight with him & was made an essential point with others who if disappointed, might be less cordial in other points of real weight.—Madison's note.

Del. no. Md. no. Va.[1] ay. N. C. ay. S. C. no. Geo. no.

Question on the last clause of Sect. 5, Art: IV—viz "No money shall be drawn from the Public Treasury, but in pursuance of *appropriations* that shall originate in the House of Reps. It passed in the negative—

N. H. no. Mas. ay. Con. no. N. J. no. Pa. no. Del. no. Md. no. Va. no. N. C. no. S. C. no. Geo. no.

Adj.d

Tuesday Aug. 14[2]. In Convention

Article VI. Sect. 9. taken up.

Mr. Pinkney argued that the making the members ineligible to offices was *degrading* to them, and the more improper as their election into the Legislature implied that they had the confidence of the people; that it was *inconvenient*, because the Senate might be supposed to contain the fittest men. He hoped

[1] In the printed Journ Virg.—no.—Madison's note.

[2] General Henry Knox wrote to Washington from New York under date of August 14th:

"Influenced by motives of delicacy I have hitherto forborne the pleasure my dear Sir of writing to you since my return from Philadelphia.

"I have been apprehensive that the stages of the business of the convention, might leak out, and be made an ill use of, by some people. I have therefore been anxious that you should escape the possibility of imputation. But as the subjects seem now to be brought to a point, I take the liberty to indulge myself in communicating with you.

"Although I frankly confess that the existence of the State governments is an insuperable evil in a national point of view, yet I do not well see how in this stage of the business they could be annihilated—

to see that body become a School of public Ministers, a nursery of Statesmen: that it was *impolitic*, because the Legislature would cease to be a magnet to the first talents and abilities. He moved to postpone the section in order to take up the following proposition viz—"the members of each House shall be incapable of holding any office under the U. S. for which they or any of others for their benefit receive any salary, fees, or emoluments of any kind—and the acceptance of such office shall vacate their seats respectively."

Gen[l] Mifflin [1] 2[ded] the motion.

Col. Mason ironically proposed to strike out the whole section, as a more effectual expedient for en-

and perhaps while they continue the frame of government could not with propriety be much higher toned than the one proposed. It is so infinitely preferable to the present constitution, and gives such a bias to a proper line of conduct in future that I think all men anxious for a national government should zealously embrace it.

"The education, genius, and habits of men on this continent are so various even at this moment, and of consequence their views of the same subject so different, that I am satisfied with the result of the convention, although it is short of my wishes and of my judgment.

"But when I find men of the purest intentions concur in embracing a system which on the highest deliberation, seems to be the best which can be obtained, under present circumstances, I am convinced of the propriety of its being strenuously supported by all those who have wished for a national republic of higher and more durable powers.

"I am persuaded that the address of the convention to accompany their proposition will be couched in the most persuasive terms.

"I feel anxious that there should be the fullest representation in Congress, in order that the propositions should receive their warmest concurrence and strongest impulse. . . ."—Wash. MSS.

[1] "General Mifflin is well known for the activity of his mind, and the brilliancy of his parts. He is well-informed and a graceful Speaker. The General is about 40 years of age and a very handsome man."—Pierce's notes, *Am. Hist. Rev.*, iii., 328.

couraging that exotic corruption which might not otherwise thrive so well in the American Soil—for compleating that Aristocrary which was probably in the contemplation of some among us, and for inviting into the Legislative Service, those generous & benevolent characters who will do justice to each other's merit, by carving out offices & rewards for it. In the present state of American morals & manners, few friends it may be thought will be lost to the plan, by the opportunity of giving premiums to a mercenary & depraved ambition.

Mr Mercer. It is a first principle in political science, that whenever the rights of property are secured, an aristocracy will grow out of it. Elective Governments also necessarily become aristocratic, because the rulers being few can & will draw emoluments for themselves from the many. The Governments of America will become aristocracies. They are so already. The public measures are calculated for the benefit of the Governors, not of the people. The people are dissatisfied & complain. They change their rulers, and the public measures are changed, but it is only a change of one scheme of emolument to the rulers, for another. The people gain nothing by it, but an addition of instability & uncertainty to their other evils.—Governm^ts^ can only be maintained by *force* or *influence*. The Executive has not *force*, deprive him of influence by rendering the members of the Legislature ineligible to Executive offices, and he becomes a mere phantom of authority. The Aristocratic part will not even let him

in for a share of the plunder. The Legislature must & will be composed of wealth & abilities, and the people will be governed by a Junto. The Executive ought to have a Council, being members of both Houses. Without such an influence, the war will be between the aristocracy & the people. He wished it to be between the Aristocracy & the Executive. Nothing else can protect the people agᵗ. those speculating Legislatures which are now plundering them throughout the U. States.

Mʳ Gerry read a Resolution of the Legislature of Massᵗˢ passed before the Act of Congˢ recommending the Convention, in which her deputies were instructed not to depart from the rotation established in the 5ᵗʰ art: of Confederation, nor to agree in any case to give to the members of Congˢ a capacity to hold offices under the Government. This he said was repealed in consequence of the Act of Congˢ with which the State thought it proper to comply in an unqualified manner. The Sense of the State however was Still the same. He could not think with Mʳ Pinkney that the disqualification was degrading. Confidence is the road to tyranny. As to Ministers & Ambassadors few of them were necessary. It is the opinion of a great many that they ought to be discontinued, on our part; that none may be sent among us, & that source of influence be shut up. If the Senate were to appoint Ambassadors as seemed to be intended, they will multiply embassies for their own sakes. He was not so fond of those productions as to wish to establish nurseries for them. If they

are once appointed, the House of Rep^{s} will be obliged to provide salaries for them, whether they approve of the measures or not. If men will not serve in the Legislature without a prospect of such offices, our situation is deplorable indeed. If our best Citizens are actuated by such mercenary views we had better chuse a single despot at once. It will be more easy to satisfy the rapacity of one than of many. According to the idea of one Gentleman (Mr Mercer) our Government it seems is to be a Gov^{t} of plunder. In that case it certainly would be prudent to have but one rather than many to be employed in it. We cannot be too circumspect in the formation of this System. It will be examined on all sides and with a very suspicious eye. The people who have been so lately in arms agst G. B. for their liberties, will not easily give them up. He lamented the evils existing at present under our Governments, but imputed them to the faults of those in office, not to the people. The misdeeds of the former will produce a critical attention to the opportunities afforded by the new system to like or greater abuses. As it now stands it is as compleat an aristocracy as ever was framed. If great powers should be given to the Senate we shall be governed in reality by a Junto as has been apprehended. He remarked that it would be very differently constituted from Cong^{s} 1. there will be but 2 deputies from each State, in Cong^{s} there may be 7. and are generally 5.—2. they are chosen for six years, those of Congress annually. 3. they are not subject to recall; those of Cong^{s} are. 4. In Congress

9 *States* are necessary for all great purposes, here 8 *persons* will suffice. Is it to be presumed that the people will ever agree to such a system? He moved to render the members of the H. of Rep^s as well as of the Senate ineligible not only during, but for one year after the expiration of their terms.—If it should be thought that this will injure the Legislature by keeping out of it men of abilities who are willing to serve in other offices it may be required as a qualification for other offices, that the Candidate shall have served a certain time in the Legislature.

Mr Govr Morris. Exclude the officers of the army & navy, and you form a band having a different interest from & opposed to the civil power: you stimulate them to despise & reproach those "talking Lords who dare not face the foe." Let this spirit be roused at the end of a war, before your troops shall have laid down their arms, and though the Civil authority "be intrenched in parchment to the teeth" they will cut their way to it. He was ag^st rendering the members of the Legislature ineligible to offices. He was for rendering them eligible ag^n after having vacated their Seats by accepting office. Why should we not avail ourselves of their services if the people chuse to give them their confidence. There can be little danger of corruption either among the people or the Legislatures who are to be the Electors. If they say, we see their merits, we honor the men, we chuse to renew our confidence in them, have they not a right to give them a preference; and can they be properly abridged of it.

Mr Williamson; introduced his opposition to the motion by referring to the question concerning "money bills." That clause he said was dead. Its Ghost he was afraid would notwithstanding haunt us. It had been a matter of conscience with him, to insist upon it as long as there was hope of retaining it. He had swallowed the vote of rejection, with reluctance. He could not digest it. All that was said on the other side was that the restriction was not *convenient*. We have now got a House of Lords which is to originate money-bills.—To avoid another *inconveniency*, we are to have a whole Legislature at liberty to cut out offices for one another. He thought a self-denying ordinance for ourselves would be more proper. Bad as the Constitution has been made by expunging the restriction on the Senate concerning money bills he did not wish to make it worse by expunging the present Section. He had scarcely seen a single corrupt measure in the Legislature of N. Carolina, which could not be traced up to office hunting.

Mr Sherman. The Constitution shd lay as few temptations as possible in the way of those in power. Men of abilities will increase as the Country grows more populous and as the means of education are more diffused.

Mr Pinkney. No State has rendered the members of the Legislature ineligible to offices. In S. Carolina the Judges are eligible into the Legislature. It cannot be supposed then that the motion will be offensive to the people. If the State Constitutions

should be revised he believed restrictions of this sort w^d^ be rather diminished than multiplied.

Mr Wilson could not approve of the section as it stood, and could not give up his judgment to any supposed objections that might arise among the people. He considered himself as acting & responsible for the welfare of millions not immediately represented in this House. He had also asked himself the serious question what he should say to his constituents in case they should call upon him to tell them why he sacrificed his own Judgment in a case where they authorized him to exercise it? Were he to own to them that he sacrificed it in order to flatter their prejudices, he should dread the retort: did you suppose the people of Penn^a^ had not good sense enough to receive a good Government? Under this impression he should certainly follow his own Judgment which disapproved of the section. He would remark in addition to the objections urged ag^st^ it, that as one branch of the Legislature was to be appointed by the Legislatures of the States, the other by the people of the States, as both are to be paid by the States, and to be appointable to State offices, nothing seemed to be wanting to prostrate the Nat^l^ Legislature, but to render its members ineligible to Nat^l^ offices, & by that means take away its power of attracting those talents which were necessary to give weight to the Govern^t^ and to render it useful to the people. He was far from thinking the ambition which aspired to Offices of dignity and trust, an ignoble or culpable one. He was sure

it was not politic to regard it in that light, or to withhold from it the prospect of those rewards, which might engage it in the career of public service. He observed that the State of Penn[a] which had gone as far as any State into the policy of fettering power, had not rendered the members of the Legislature ineligible to offices of Gov[t]

M[r] Elsworth did not think the mere postponement of the reward would be any material discouragement of merit. Ambitious minds will serve 2 years or 7 years in the Legislature for the sake of qualifying themselves for other offices. This he thought a sufficient security for obtaining the services of the ablest men in the Legislature, although whilst members they should be ineligible to Public offices. Besides, merit will be most encouraged, when most impartially rewarded. If rewards are to circulate only within the Legislature, merit out of it will be discouraged.

M[r] Mercer was extremely anxious on this point. What led to the appointment of this Convention? The corruption & mutability of the Legislative Councils of the States. If the plan does not remedy these, it will not recommend itself; and we shall not be able in our private capacities to support & enforce it: nor will the best part of our Citizens exert themselves for the purpose.—It is a great mistake to suppose that the paper we are to propose will govern the U. States. It is The men whom it will bring into the Govern[t] and interest in maintaining it that is to govern them. The paper will only mark out the

mode & the form. Men are the substance and must do the business. All Govt must be by force or influence. It is not the King of France—but 200,000 janisaries of power that govern that Kingdom. There will be no such force here; influence then must be substituted; and he would ask whether this could be done, if the members of the Legislature should be ineligible to offices of State; whether such a disqualification would not determine all the most influential men to stay at home, & prefer appointments within their respective States.

Mr Wilson was by no means satisfied with the answer given by Mr Elseworth to the argument as to the discouragement of merit. The members must either go a second time into the Legislature, and disqualify themselves—or say to their Constituents, we served you before only from the mercenary view of qualifying ourselves for offices, and having answered this purpose we do not chuse to be again elected.

Mr Govr Morris put the case of a war, and the Citizen the most capable of conducting it, happening to be a member of the Legislature. What might have been the consequence of such a regulation at the commencement, or even in the Course of the late contest for our liberties?

On question for postponing in order to take up Mr Pinkneys motion, it was lost,

N. H. ay. Mas. no. Ct no. N. J. no. Pa ay. Del. ay. Md ay. Va ay. N. C. no. S. C. no. Geo. divd

Mr. Govr. Morris moved to insert, after "office," except offices in the army or navy: but in that case their offices shall be vacated.

Mr. Broom 2ds him.

Mr. Randolph had been & should continue uniformly opposed to the striking out of the clause; as opening a door for influence & corruption. No arguments had made any impression on him, but those which related to the case of war, and a co-existing incapacity of the fittest commanders to be employed. He admitted great weight in these, and would agree to the exception proposed by Mr. Govr. Morris.

Mr. Butler & Mr. Pinkney urged a general postponemt. of 9. Sect. Art. VI. till it should be seen what powers would be vested in the Senate, when it would be more easy to judge of the expediency of allowing the officers of State to be chosen out of that body.— A general postponement was agreed to nem. con.

Art: VI. Sect. 10. taken up—"that members be paid by their respective States."

Mr. Elseworth said that in reflecting on this subject he had been satisfied that too much dependence on the States would be produced by this mode of payment. He moved to strike it out and insert that they should "be paid out of the Treasury of the U. S. an allowance not exceeding ( ) dollars per day or the present value thereof."

Mr. Govr. Morris, remarked that if the members were to be paid by the States it would throw an unequal burden on the distant States, which would be unjust as the Legislature, was to be a national

Assembly. He moved that the payment be out of the Nat^l Treasury; leaving the quantum to the discretion of the Nat^l Legislature. There could be no reason to fear that they would overpay themselves.

Mr Butler contended for payment by the States; particularly in the case of the Senate, who will be so long out of their respective States, that they will lose sight of their Constituents unless dependent on them for their support.

Mr Langdon was ag^st payment by the States. There would be some difficulty in fixing the sum; but it would be unjust to oblige the distant States to bear the expence of their members in travelling to and from the Seat of Gov^t

Mr Madison. If the H. of Rep^s is to be chosen *biennially*—and the Senate to be *constantly* dependent on the Legislatures which are chosen *annually*, he could not see any chance for that stability in the Genl Gov^t the want of which was a principal evil in the State Gov^ts His fear was that the organization of the Gov^t supposing the Senate to be really indepen^t for six years, would not effect our purpose. It was nothing more than a combination of the peculiarities of two of the State Gov^ts which separately had been found insufficient. The Senate was formed on the model of that of Maryl^d The Revisionary check, on that of N. York. What the effect of a union of these provisions might be, could not be foreseen. The enlargement of the sphere of the Government was indeed a circumstance which he thought would be favorable as he had on several

occasions undertaken to show. He was however for fixing at least two extremes not to be exceeded by the Nat^l Legisl^re in the payment of themselves.

Mr Gerry. There are difficulties on both sides. The observation of Mr Butler has weight in it. On the other side, the State Legislatures may turn out the Senators by reducing their salaries. Such things have been practised.

Col. Mason. It has not yet been noticed that the clause as it now stands makes the House of Represent^s also dependent on the State Legislatures: so that both houses will be made the instruments of the politics of the States whatever they may be.

Mr Broom could see no danger in trusting the Genl Legislature with the payment of themselves. The State Legislatures had this power, and no complaint had been made of it.

Mr Sherman was not afraid that the Legislature would make their own wages too high; but too low, so that men ever so fit could not serve unless they were at the same time rich. He thought the best plan would be to fix a moderate allowance to be paid out of the Nat^l Treas^y and let the States make such additions as they might judge fit. He moved that 5 dollars per day be the sum, any further emoluments to be added by the States.

Mr Carrol had been much surprised at seeing this clause in the Report. The dependence of both Houses on the State Legislatures is compleat; especially as the members of the former are eligible to State offices. The States can now say: if you do

not comply with our wishes, we will starve you; if you do we will reward you. The new Govt in this form was nothing more than a second edition of Congress in two volumes, instead of one, and perhaps with very few amendments—

Mr Dickenson took it for granted that all were convinced of the necessity of making the Genl Govt independent of the prejudices, passions, and improper views of the State Legislatures. The contrary of This was effected by the section as it stands. On the other hand there were objections agst taking a permanent standard as wheat which had been suggested on a former occasion, as well as against leaving the matter to the pleasure of the Natl Legislature. He proposed that an Act should be passed every 12 years by the Natl Legislre settling the quantum of their wages. If the Genl Govt should be left dependent on the State Legislatures, it would be happy for us if we had never met in this Room.

Mr Elseworth was not unwilling himself to trust the Legislature with authority to regulate their own wages, but well knew that an unlimited discretion for that purpose would produce strong, tho' perhaps not insuperable objections. He thought changes in the value of money, provided for by his motion in the words, "or the present value thereof."

Mr L. Martin. As the Senate is to represent the States, the members of it ought to be paid by the States.

Mr Carrol. The Senate was to represent & man-

age the affairs of the whole, and not to be the advocates of State interests. They ought then not to be dependent on nor paid by the States.

On the question for paying the Members of the Legislature out of the Nat[l] Treasury,

N. H. ay. Mass. no. C[t] ay. N. J. ay. P[a] ay. Del. ay. M[d] ay. V[a] ay. N. C. ay. S. C. no. Geo. ay.

M[r] Elseworth moved that the pay be fixed at 5 doll[rs] or the present value thereof per day during their attendance & for every thirty miles in travelling to & from Congress.

M[r] Strong preferred 4 dollars, leaving the Sts. at liberty to make additions.

On question for fixing the pay at 5 dollars.

N. H. no. Mass. no. C[t] ay. N. J. no. P[a] no. Del. no. M[d] no. V[a] ay. N. C. no. S. C. no. Geo. no.

M[r] Dickenson proposed that the wages of the members of both houses s[d] be required to be the same.

M[r] Broome seconded him.

M[r] Ghorum. this would be unreasonable. The Senate will be detained longer from home, will be obliged to remove their families, and in time of war perhaps to sit constantly. Their allowance should certainly be higher. The members of the Senates in the States are allowed more, than those of the other house.

M[r] Dickenson withdrew his motion.

It was moved & agreed to amend the section by adding—"to be ascertained by law."

The section (Art. VI. Sect. 10) as amended, agreed to nem. con.

Adj^{d}

WEDNESDAY AUGUST 15. IN CONVENTION.

Art: VI. Sect. 11. Agreed to nem. con.

Art: VI. Sect 12. taken up.

Mr Strong moved to amend the article so as to read—"Each House shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same and for fixing the salaries of the officers of the Gov^{t} which shall originate in the House of Representatives; but the Senate may propose or concur with amendments as in other cases"

Col. Mason, 2^{ds} the motion. He was extremely earnest to take this power from the Senate, who he said could already sell the whole Country by means of Treaties.

Mr Ghorum urged the amendment as of great importance. The Senate will first acquire the habit of preparing money bills, and then the practice will grow into an exclusive right of preparing them.

Mr Govern^{r} Morris opposed it as unnecessary and inconvenient.

Mr Williamson, some think this restriction on the Senate essential to liberty, others think it of no importance. Why should not the former be indulged.

he was for an efficient and stable Govt: but many would not strengthen the Senate if not restricted in the case of money bills. The friends of the Senate would therefore lose more than they would gain by refusing to gratify the other side. He moved to postpone the subject till the powers of the Senate should be gone over.

Mr Rutlidge 2ds the motion.

Mr Mercer should hereafter be agst returning to a reconsideration of this section. He contended (alluding to Mr Mason's observations) that the Senate ought not to have the power of treaties. This power belonged to the Executive department; adding that Treaties would not be final so as to alter the laws of the land, till ratified by legislative authority. This was the case of Treaties in Great Britain; particularly the late Treaty of Comerce with France.

Col. Mason, did not say that a Treaty would repeal a law; but that the Senate by means of treaty might alienate territory &c, without legislative sanction. The cessions of the British Islands in W. Indies by Treaty alone were an example. If Spain should possess herself of Georgia therefore the Senate might by treaty dismember the Union. He wished the motion to be decided now, that the friends of it might know how to conduct themselves.

On the question for postponing Sect: 12. it passed in the affirmative.

N. H. ay. Mass. ay. Ct no. N. J. no. Pna no. Del: no. Maryd no. Va ay. N. C. ay. S. C. ay. Geo. ay.

Mr Madison moved that all acts before they become laws should be submitted both to the Executive and supreme Judiciary Departments, that if either of these should object $\frac{2}{3}$ of each House, if both should object, $\frac{3}{4}$ of each House, should be necessary to overrule the objections and give to the acts the force of law.[1]

Mr Wilson seconds the motion

Mr Pinkney opposed the interference of the Judges in the Legislative business: it will involve them in parties, and give a previous tincture to their opinions.

Mr Mercer heartily approved the motion. It is an axiom that the Judiciary ought to be separate from the Legislative; but equally so that it ought to be independent of that department. The true policy of the axiom is that legislative usurpation and oppression may be obviated. He disapproved of the Doc-

[1] Madison's note says: "See the motion at large in the Journal of this date, page 253, and insert it here." The Journal gives it as follows:

"It was moved by Mr. Madison, and seconded, to agree to the following amendment of the thirteenth section of the sixth article:

"Every bill which shall have passed the two houses, shall, before it become a law, be severally presented to the President of the United States, and to the judges of the supreme court for the revision of each. If, upon such revision, they shall approve of it, they shall respectively signify their approbation by signing it; but if, upon such revision, it shall appear improper to either, or both, to be passed into a law, it shall be returned, with the objections against it, to that house, in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider the bill: but if, after such reconsideration, two thirds of that house, when either the President, or a majority of the judges shall object, or three fourths, where both shall object, shall agree to pass it, it shall, together with the objections, be sent to the other house, by which it shall likewise be reconsidered; and, if approved by two thirds, or three fourths of the other house, as the case may be, it shall become a law."

trine that the Judges as expositors of the Constitution should have authority to declare a law void. He thought laws ought to be well and cautiously made, and then to be uncontroulable.

Mr. Gerry. This motion comes to the same thing with what has been already negatived.

Question on the motion of Mr. Madison

N. H. no. Mass. no. Ct. no. N. J. no. Pa. no. Del. ay. Maryd. ay. Virga. ay. N. C. no. S. C. no. Geo. no.

Mr. Govr. Morris regretted that something like the proposed check could not be agreed to. He dwelt on the importance of public Credit, and the difficulty of supporting it without some strong barrier against the instability of legislative Assemblies. He suggested the idea of requiring three fourths of each house to *repeal* laws where the President should not concur. He had no great reliance on the revisionary power as the Executive was now to be constituted (elected by Congress.) The legislature will contrive to soften down the President. He recited the history of paper emissions, and the perseverance of the legislative assemblies in repeating them, with all the distressing effects of such measures before their eyes. Were the National legislature formed, and a war was now to break out, this ruinous expedient would be again resorted to, if not guarded against. The requiring ¾ to repeal would, though not a compleat remedy, prevent the hasty passage of laws, and the frequency of those repeals which destroy faith in the public, and which are among our greatest calamities.

Mr Dickenson was strongly impressed with the remark of Mr Mercer as to the power of the Judges to set aside the law. He thought no such power ought to exist. He was at the same time at a loss what expedient to substitute. The Justiciary of Arragon he observed became by degrees the law-giver.

Mr Govr Morris, suggested the expedient of an absolute negative in the Executive. He could not agree that the Judiciary which was part of the Executive, should be bound to say that a direct violation of the Constitution was law. A controul over the legislature might have its inconveniences. But view the danger on the other side. The most virtuous Citizens will often as members of a legislative body concur in measures which afterwards in their private capacity they will be ashamed of. Encroachments of the popular branch of the Government ought to be guarded ag^st^ The Ephori at Sparta became in the end absolute. The Report of the Council of Censors in Pennsylv^a^ points out the many invasions of the legislative department on the Executive numerous as the latter[1] is, within the short term of seven years, and in a State where a strong party is opposed to the Constitution, and watching every occasion of turning the public resentments ag^st^ it. If the Executive be overturned by the popular branch, as happened in England, the tyranny of one man will ensue. In Rome where the Aristocracy overturned the throne,

[1] The Executive consists at this time of ab^t^ 20 members.—Madison's note.

the consequence was different. He enlarged on the tendency of the legislative Authority to usurp on the Executive and wished the section to be postponed, in order to consider of some more effectual check than requiring ¾ only to overrule the negative of the Executive.

Mr Sharman. Can one man be trusted better than all the others if they all agree? This was neither wise nor safe. He disapproved of Judges meddling in politics and parties. We have gone far enough in forming the negative as it now stands.

Mr Carrol. when the negative to be overruled by ¾ only was agreed to, the *quorum* was not fixed. He remarked that as a majority was now to be the quorum, 17. in the larger, and 8 in the smaller house might carry points. The advantage that might be taken of this seemed to call for greater impediments to improper laws. He thought the controuling power however of the Executive could not be well decided, till it was seen how the formation of that department would be finally regulated. He wished the consideration of the matter to be postponed.

Mr Ghorum saw no end to these difficulties and postponements. Some could not agree to the form of Government before the powers were defined. Others could not agree to the powers till it was seen how the Government was to be formed. He thought a majority as large a quorum as was necessary. It was the quorum almost every where fixt in the U. States.

Mr Wilson; after viewing the subject with all the

coolness and attention possible was most apprehensive of a dissolution of the Govt from the legislature swallowing up all the other powers. He remarked that the prejudices agst the Executive resulted from a misapplication of the adage that the parliament was the palladium of liberty. Where the Executive was really formidable, *King* and *Tyrant*, were naturally associated in the minds of people; not *legislature* and *tyranny*. But where the Executive was not formidable, the two last were most properly associated. After the destruction of the King in Great Britain, a more pure and unmixed tyranny sprang up in the parliament than had been exercised by the monarch. He insisted that we had not guarded agst the danger on this side by a sufficient self-defensive power either to the Executive or Judiciary department.

Mr Rutlidge was strenuous agst postponing; and complained much of the tediousness of the proceedings.

Mr Elseworth held the same language. We grow more & more sceptical as we proceed. If we do not decide soon, we shall be unable to come to any decision.

The question for postponement passed in the negative: Del: & Maryd only being in the affirmative.

Mr Williamson moved to change, "⅔ of each House" into "¾" as requisite to overrule the dissent of the President. He saw no danger in this, and preferred giving the power to the Presidt alone, to admitting the Judges into the business of legislation.

Mr Wilson 2^ds^ the motion; referring to and repeating the ideas of Mr Carroll.

On this motion for ¾, instead of two-thirds; it passed in the affirmative

N. H. no. Mass. no. C^t^ ay. N. J. no. Pen^a^ div^d^ Del. ay. M^d^ ay. V^a^ ay. N. C. ay. S. C. ay. Geo. no.

Mr Madison, observing that if the negative of the President was confined to *bills;* it would be evaded by acts under the form and name of Resolutions, votes &c, proposed that "or resolve" should be added after "*bill*" in the beginning of sect 13. with an exception as to votes of adjournment &c. After a short and rather confused conversation on the subject, the question was put & rejected, the States being as follows,

N. H. no. Mass. ay. C^t^ no. N. J. no. Pen^a^ no. Del. ay. M^d^ no. V^a^ no. N. C. ay. S. C. no. Geo. no.

"*Ten* days (Sundays excepted)" instead of "*seven*" were allowed to the President for returning bills with his objections N. H. & Mas: only voting ag^st^ it.

The 13 Sect: of Art. VI as amended was then agreed to.

Adjourned.

THURSDAY. AUGUST 16. IN CONVENTION.

Mr Randolph having thrown into a new form the motion putting votes, Resolutions &c. on a footing

with Bills, renewed it as follows—"Every order resolution or vote, to which the concurrence of the Senate & House of Repr may be necessary (except on a question of adjournment and in the cases hereinafter mentioned) shall be presented to the President for his revision; and before the same shall have force shall be approved by him, or being disapproved by him shall be repassed by the Senate & House of Repr according to the rules & limitations prescribed in the case of a Bill."

Mr Sherman thought it unnecessary, except as to votes taking money out of the Treasury which might be provided for in another place.

On Question as moved by Mr Randolph

N. H. ay. Mass. not present. Ct ay. N. J. no. Pa ay. Del. ay. Md ay. Va ay. N. C. ay. S. C. ay. Geo. ay.

The Amendment was made section 14. of Art. VI.

Art: VII. Sect. 1. taken up.

Mr L. Martin asked what was meant by the Committee of detail in the expression,—"*duties*" and "*imposts*." If the meaning were the same, the former was unnecessary; if different, the matter ought to be made clear.

Mr Wilson. *duties* are applicable to many objects to which the word *imposts* does not relate. The latter are appropriated to commerce; the former extend to a variety of objects, as stamp duties &c.

Mr Carroll reminded the Convention of the great difference of interests among the States, and doubts

the propriety in that point of view of letting a majority be a quorum.

Mr Mason urged the necessity of connecting with the power of levying taxes duties &c, the prohibition in Sect. 4 Art. VI that no tax should be laid on exports. He was unwilling to trust to its being done in a future article. He hoped the Northn States did not mean to deny the Southern this security. It would hereafter be as desirable to the former when the latter should become the most populous. He professed his jealousy for the productions of the Southern or as he called them, the staple States. He moved to insert the following amendment: "provided that no tax duty or imposition shall be laid by the Legislature of the U. States on articles exported from any State"

Mr Sherman had no objection to the proviso here, other than it would derange the parts of the report as made by the Committee, to take them in such an order.

Mr Rutlidge. It being of no consequence in what order points are decided, he should vote for the clause as it stood, but on condition that the subsequent part relating to negroes should also be agreed to.

Mr Governeur Morris considered such a proviso as inadmissible any where. It was so radically objectionable, that it might cost the whole system the support of some members. He contended that it would not in some cases be equitable to tax imports without taxing exports; and that taxes on exports would be often the most easy and proper of the two.

Mr Madison. 1. the power of laying taxes on exports is proper in itself, and as the States cannot with propriety exercise it separately, it ought to be vested in them collectively. 2. it might with particular advantage be exercised with regard to articles in which America was not rivalled in foreign markets, as Tobo &c The contract between the French Farmers Genl and Mr Morris stipulating that if taxes sd be laid in america on the export of Tobo they sd be paid by the Farmers, shewed that it was understood by them, that the price would be thereby raised in America, and consequently the taxes be paid by the European Consumer. 3. it would be unjust to the States whose produce was exported by their neighbours, to leave it subject to be taxed by the latter. This was a grievance which had already filled N. H. Cont N. Jery Del: and N. Carolina with loud complaints, as it related to imports, and they would be equally authorized by taxes by the States on exports. 4. The Southn States being most in danger and most needing naval protection, could the less complain if the burthen should be somewhat heaviest on them. 5. we are not providing for the present moment only, and time will equalize the situation of the States in this matter. He was for these reasons agst the motion.

Mr Williamson considered the clause proposed agst taxes on exports as reasonable and necessary.

Mr Elseworth was agst Taxing exports; but thought the prohibition stood in the most proper place, and was agst deranging the order reported by the Committee.

M[r] Wilson was decidedly ag[st] prohibiting general taxes on exports. He dwelt on the injustice and impolicy of leaving N. Jersey Connecticut &c any longer subject to the exactions of their commercial neighbours.

M[r] Gerry thought the legislature could not be trusted with such a power. It might ruin the Country. It might be exercised partially, raising one and depressing another part of it.

M[r] Gov[r] Morris. However the legislative power may be formed, it will if disposed be able to ruin the Country. He considered the taxing of exports to be in many cases highly politic Virginia has found her account in taxing Tobacco. All Countries having peculiar articles tax the exportation of them; as France her wines and brandies. A tax here on lumber, would fall on the W. Indies & punish their restrictions on our trade. The same is true of live stock and in some degree of flour. In case of a dearth in the West Indies, we may extort what we please. Taxes on exports are a necessary source of revenue. For a long time the people of America will not have money to pay direct taxes. Seize and sell their effects and you push them into Revolts.

M[r] Mercer was strenuous against giving Congress power to tax exports. Such taxes are impolitic, as encouraging the raising of articles not meant for exportation. The States had now a right where their situation permitted, to tax both the imports and the exports of their uncommercial neighbours. It was

enough for them to sacrifice one half of it. It had been said the Southern States had most need of naval protection. The reverse was the case. Were it not for promoting the carrying trade of the North^{n} States, the South^{n} States could let the trade go into foreign bottoms, where it would not need our protection. Virginia by taxing her tobacco had given an advantage to that of Maryland.

Mr Sherman. To examine and compare the States in relation to imports and exports will be opening a boundless field. He thought the matter had been adjusted, and that imports were to be subject, and exports not, to be taxed. He thought it wrong to tax exports except it might be such articles as ought not to be exported. The complexity of the business in America would render an equal tax on exports impracticable. The oppression of the uncommercial States was guarded agst by the power to regulate trade between the States. As to compelling foreigners, that might be done by regulating trade in general. The Government would not be trusted with such a power. Objections are most likely to be excited by considerations relating to taxes & money. A power to tax exports would shipwreck the whole.

Mr Carrol was surprised that any objection should be made to an exception of exports from the power of taxation.

It was finally agreed that the question concerning exports sh^{d} lie over for the place in which the exception stood in the report: Mary^{d} alone voting agst it

Sect: 1. (Art. VII) agreed to; Mr Gerry alone answering, no.

Clause for regulating commerce with foreign nations &c. agreed to nem. con.

for coining money. ag^d^ to nem. con.

for regulating foreign coin. d^o^ d^o^

for fixing standard of weights & measures. d^o^ d^o^

"To establish post-offices," Mr Gerry moved to add, and post-roads. Mr Mercer 2^ded^ & on question N. H. no. Mass. ay. C^t^ no. N. J. no. Pen^a^ no. Del. ay, M^d^ ay., V^a^ ay. N. C. no. S. C. ay. Geo. ay.

Mr Govr Morris moved to strike out "and emit bills on the credit of the U. States"—If the United States had credit such bills would be unnecessary; if they had not, unjust & useless.

Mr Butler, 2^ds^ the motion.

Mr Madison, will it not be sufficient to prohibit the making them a *tender?* This will remove the temptation to emit them with unjust views. And promissory notes in that shape may in some emergencies be best.

Mr Govr Morris, striking out the words will leave room still for notes of a *responsible* minister which will do all the good without the mischief. The Monied interest will oppose the plan of Government, if paper emissions be not prohibited.

Mr Ghorum was for striking out, without inserting any prohibition, if the words stand they may suggest and lead to the measure.

Col. Mason had doubts on the subject. Cong^{s} he thought would not have the power unless it were expressed. Though he had a mortal hatred to paper money, yet as he could not forsee all emergencies, he was unwilling to tie the hands of the Legislature. He observed that the late war could not have been carried on, had such a prohibition existed.

Mr. Ghorum. The power as far as it will be necessary or safe, is involved in that of borrowing.

Mr Mercer was a friend to paper money, though in the present state & temper of America, he should neither propose nor approve of such a measure. He was consequently opposed to a prohibition of it altogether. It will stamp suspicion on the Government to deny it a discretion on this point. It was impolitic also to excite the opposition of all those who were friends to paper money. The people of property would be sure to be on the side of the plan, and it was impolitic to purchase their further attachment with the loss of the opposite class of Citizens.

Mr Elseworth thought this a favorable moment to shut and bar the door against paper money. The mischiefs of the various experiments which had been made, were now fresh in the public mind and had excited the disgust of all the respectable part of America. By withholding the power from the new Govern^{t} more friends of influence would be gained to it than by almost any thing else. Paper money can in no case be necessary. Give the Government

credit, and other resources will offer. The power may do harm, never good.

Mr Randolph, notwithstanding his antipathy to paper money, could not agree to strike out the words, as he could not foresee all the occasions that might arise.

Mr Wilson. It will have a most salutary influence on the credit of the U. States to remove the possibility of paper money. This expedient can never succeed whilst its mischiefs are remembered. And as long as it can be resorted to, it will be a bar to other resources.

Mr Butler remarked that paper was a legal tender in no Country in Europe. He was urgent for disarming the Government of such a power.

Mr Mason was still averse to tying the hands of the Legislature *altogether*. If there was no example in Europe as just remarked it might be observed on the other side, that there was none in which the Government was restrained on this head.

Mr Read, thought the words, if not struck out, would be as alarming as the mark of the Beast in Revelations.

Mr Langdon had rather reject the whole plan than retain the three words ("and emit bills")

On the motion for striking out

N. H. ay. Mass. ay. Ct ay. N. J. no. Pa ay. Del. ay. Md no. Va ay.[1] N. C. ay. S. C. ay. Geo. ay.

[1] This vote in the affirmative by Virga was occasioned by the acquiescence of Mr Madison who became satisfied that striking out the

The clause for borrowing money, agreed to nem. con.

Adj^d^

FRIDAY AUGUST 17TH IN CONVENTION

Art. VII. Sect. 1. resumed. on the clause, "to appoint Treasurer by ballot,"

Mr Ghorum moved to insert "joint" before ballot, as more convenient as well as reasonable, than to require the separate concurrence of the Senate.

Mr Pinkney 2^ds^ the motion. Mr Sherman opposed it as favoring the larger States.

Mr Read moved to strike out the clause, leaving the appointment of the Treasurer as of other officers to the Executive. The Legislature was an improper body for appointments. Those of the State legislatures were a proof of it. The Executive being responsible would make a good choice.

Mr Mercer 2^ds^ the motion of Mr Read.

On the motion for inserting the word "joint" before ballot

N. H. ay. Mass. ay. C^t^ no. N. J. no. P^a^ ay. M^d^ no. V^a^ ay. N. C. ay. S. C. ay. Geo. ay.

Col. Mason in opposition to Mr Reads motion desired it might be considered to whom the money would belong; if to the people, the legislature rep-

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words would not disable the Gov^t^ from the use of public notes as far as they could be safe & proper; & would only cut off the pretext for a paper currency and particularly for making the bills a tender either for public or private debts.—Madison's note.

resenting the people ought to appoint the keepers of it.

On striking out the clause as amended by inserting "Joint"

N. H. no. Mass. no. Ct. no. Pa. ay. Del. ay. Md. ay. Va. no. N. C. no. S. C. ay. Geo. no.

"To constitute inferior tribunals" agreed to nem. con.

"To make rules as to captures on land & water" do. do.

"To declare the law and punishment of piracies and felonies &c &c" considered.

Mr. Madison moved to strike out "and punishment &c."

Mr. Mason doubts the safety of it, considering the strict rule of construction in criminal cases. He doubted also the propriety of taking the power in all these cases wholly from the States.

Mr. Govern. Morris thought it would be necessary to extend the authority further, so as to provide for the punishment of counterfeiting in general. Bills of exchange for example might be forged in one State and carried into another.

It was suggested by some other member that *foreign* paper might be counterfeited by Citizens; and that it might be politic to provide by national authority for the punishment of it.

Mr. Randolph did not conceive that expunging "the punishment" would be a constructive exclusion of the power. He doubted only the efficacy of the word "declare."

Mr Wilson was in favor of the motion. Strictness was not necessary in giving authority to enact penal laws; though necessary in enacting & expounding them.

On motion for striking out "and punishment" as moved by Mr Madison

N. H. no. Mass. ay. Ct no. Pa ay. Del. ay. Md no. Va ay. N. C. ay. S. C. ay. Geo. ay.

Mr Govr Morris moved to strike out "declare the law" and insert "punish" before "piracies," and on the question

N. H. ay. Mass. ay. Ct no. Pa ay. Del. ay. Md ay. Va no. N. C. no. S. C. ay. Geo. ay.

Mr Madison & Mr Randolph moved to insert "define &," before "punish."

Mr Wilson thought "felonies" sufficiently defined by common law.

Mr Dickenson concurred with Mr Wilson

Mr Mercer was in favor of the amendment.

Mr Madison. felony at common law is vague. It is also defective. One defect is supplied by Stat: of Anne as to running away with vessels which at common law was a breach of trust only. Besides no foreign law should be a standard farther than is expressly adopted. If the laws of the States were to prevail on this subject, the Citizens of different States would be subject to different punishments for the same offence at Sea. There would be neither uniformity nor stability in the law—The proper remedy for all these difficulties was to vest the power proposed by the term "define" in the Natl legislature.

Mr Govr Morris would prefer *designate* to *define*, the latter being as he conceived, limited to the preexisting meaning.

It was said by others to be applicable to the creating of offences also, and therefore suited the case both of felonies & of piracies. The motion of Mr M. & M^r^ R was agreed to.

Mr Elseworth enlarged the motion so as to read "to define and punish piracies and felonies committed on the high seas, counterfeiting the securities and current coin of the U. States, and offences ag^st^ the law of Nations" which was agreed to nem. con.

"To subdue a rebellion in any State, on the application of its legislature"

Mr Pinkney moved to strike out, "on the application of its legislature"

Mr Govr Morris 2^ds^

Mr L. Martin opposed it as giving a dangerous & unnecessary power. The consent of the State ought to precede the introduction of any extraneous force whatever.

Mr Mercer supported the opposition of Mr Martin.

Mr Elseworth proposed to add after "legislature," "or Executive."

Mr Govr Morris. The Executive may possibly be at the head of the Rebellion. The Genl Gov^t^ should enforce obedience in all cases where it may be necessary.

Mr Elseworth. In many cases The Genl Gov^t^ ought not to be able to interpose, unless called upon.

He was willing to vary his motion so as to read "or without it when the legislature cannot meet."

Mr. Gerry was agst. letting loose the myrmidons of the U. States on a State without its own consent. The States will be the best Judges in such cases. More blood would have been spilt in Masts. in the late insurrection, if the Genl. Authority had intermeddled.

Mr. Langdon was for striking out as moved by Mr. Pinkney. The apprehension of the national force, will have a salutary effect in preventing insurrections.

Mr. Randolph. If the Natl. Legislature is to judge whether the State legislature can or cannot meet, that amendment would make the clause as objectionable as the motion of Mr. Pinkney.

Mr. Govr. Morris. We are acting a very strange part. We first form a strong man to protect us, and at the same time wish to tie his hands behind him. The legislature may surely be trusted with such a power to preserve the public tranquillity.

On the motion to add, "or without it (application) when the legislature cannot meet"

N. H. ay. Mass. no. Ct. ay. Pa. divd. Del. no. Md. no. Va. ay. N. C. divd. S. C. ay. Geo. ay. So agreed to.

Mr. Madison and Mr. Dickenson moved to insert as explanatory, after "State"—"against the Government thereof" There might be a rebellion agst. the U. States—which was agreed to nem. con.

On the clause as amended

N. H. ay. Mass.[1] abs^{t} C^{t} ay. Pen. abs^{t} Del. no. M^{d} no. V^{a} ay. N. C. no. S. C. no. Georg. ay—so it was lost

"To make war"

Mr Pinkney opposed the vesting this power in the Legislature. Its proceedings were too slow. It w^{d} meet but once a year. the H^{s} of Rep^{s} would be too numerous for such deliberations. The Senate would be the best depository, being more acquainted with foreign affairs, and most capable of proper resolutions. If the States are equally represented in the Senate, so as to give no advantage to the large States, the power will notwithstanding be safe, as the small have their all at stake in such cases as well as the large States. It would be singular for one authority to make war, and another peace.

Mr Butler. The Objections agst the Legislature lie in a great degree agst the Senate. He was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the Nation will support it.

Mr Madison and Mr Gerry moved to insert "*declare*," striking out "*make*" war; leaving to the Executive the power to repel sudden attacks.

Mr Sharman thought it stood very well. The Executive sh^{d} be able to repel and not to commence war. "Make" is better than "declare" the latter narrowing the power too much.

Mr Gerry never expected to hear in a republic a motion to empower the Executive alone to declare war.

[1] In the printed Journal, Mas. no.—Madison's note.

Mr. Elsworth. There is a material difference between the cases of making *war* and making *peace*. It shd. be more easy to get out of war, than into it. War also is a simple and overt declaration, peace attended with intricate & secret negociations.

Mr. Mason was agst. giving the power of war to the Executive because not safely to be trusted with it; or to the Senate, because not so constructed as to be entitled to it. He was for clogging rather than facilitating war; but for facilitating peace. He preferred "*declare*" to "*make*."

On the motion to insert "*declare*"—in place of "*make*," it was agreed to.

N. H. no. Mass. abst. Cont. no.[1] Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. Pinkney's motion to strike out whole clause, disagd. to without call of States.

Mr. Butler moved to give the Legislature the power of peace, as they were to have that of war.

Mr. Gerry 2ds. him. 8 Senators may possibly exercise the power if vested in that body, and 14 if all should be present; and may consequently give up part of the U. States. The Senate are more liable to be corrupted by an Enemy than the whole Legislature.

On the motion for adding "and peace" after "war,"

[1] On the remark by Mr. King that "*make*" war might be understood to "conduct" it which was an Executive function, Mr. Elsworth gave up his objection, and the vote of Con. was changed to *ay*.—Madison's note.

N. H. no. Mas. no. C^{t} no. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. no. Geo. no.
Adjourned

SATURDAY AUGUST 18. IN CONVENTION

Mr Madison submitted, in order to be referred to the Committee of detail the following powers as proper to be added to those of the General Legislature

"To dispose of the unappropriated lands of the U. States"

"To institute temporary Governments for new States arising therein"

"To regulate affairs with the Indians as well within as without the limits of the U. States.

"To exercise exclusively Legislative authority at the seat of the General Government, and over a district around the same, not exceeding ——— square miles; the Consent of the Legislature of the State or States comprising the same, being first obtained"

"To grant charters of incorporation in cases where the public good may require them, and the authority of a single State may be incompetent"

"To secure to literary authors their copy rights for a limited time"

"To establish an University"

"To encourage by premiums & provisions, the advancement of useful knowledge and discoveries"

"To authorize the Executive to procure and hold

for the use of the U. S. landed property for the erection of Forts, magazines, and other necessary buildings"

These propositions were referred to the Committee of detail which had prepared the Report and at the same time the following which were moved by M[r] Pinkney:—in both cases unanimously:

"To fix and permanently establish the seat of Government of the U. S. in which they shall possess the exclusive right of soil & jurisdiction"

"To establish seminaries for the promotion of literature and the arts & sciences."

"To grant charters of incorporation"

"To grant patents for useful inventions"

"To secure to Authors exclusive rights for a certain time"

"To establish public institutions, rewards and immunities for the promotion of agriculture, commerce, trades and manufactures"

"That funds which shall be appropriated for the payment of public Creditors, shall not during the time of such appropriation, be diverted or applied to any other purpose and that the Committee prepare a clause or clauses for restraining the Legislature of the U. S. from establishing a perpetual revenue "

"To secure the payment of the public debt"

"To secure all creditors under the new Constitution from a violation of the public faith when pledged by the authority of the Legislature"

"To grant letters of mark and reprisal"

"To regulate Stages on the post roads"

Mr Mason introduced the subject of regulating the militia. He thought such a power necessary to be given to the Genl Government. He hoped there would be no standing army in time of peace, unless it might be for a few garrisons. The Militia ought therefore to be the more effectually prepared for the public defence. Thirteen States will never concur in any one system, if the disciplining of the Militia be left in their hands. If they will not give up the power over the whole, they probably will over a part as a select militia. He moved as an addition to the propositions just referred to the Comittee of detail, & to be referred in like manner, "a power to regulate the militia."

Mr Gerry remarked that some provision ought to be made in favor of public Securities, and something inserted concerning letters of marque, which he thought not included in the power of war. He proposed that these subjects should also go to a Committee.

Mr Rutlidge moved to refer a clause "that funds appropriated to public creditors should not be diverted to other purposes."

Mr Mason was much attached to the principle, but was afraid such a fetter might be dangerous in time of war. He suggested the necessity of preventing the danger of perpetual revenue which must of necessity subvert the liberty of any country. If it be objected to on the principle of Mr Rutlidge's motion that public Credit may require perpetual provisions, that case might be excepted; it being declared that in other cases, no taxes should be laid for a longer

term than —— years. He considered the caution observed in Great Britain on this point as the paladium of public liberty.

Mr Rutlidge's motion was referred—He then moved that a Grand Committee be appointed to consider the necessity and expediency of the U. States assuming all the State debts—A regular settlement between the Union & the several States would never take place. The assumption would be just as the State debts were contracted in the common defence. It was necessary, as the taxes on imports the only sure source of revenue were to be given up to the Union. It was politic, as by disburdening the people of the State debts it would conciliate them to the plan.

Mr King and Mr Pinkney seconded the motion. (Col. Mason interposed a motion that the Committee prepare a clause for restraining perpetual revenue, which was agreed to nem. con.)

Mr Sherman thought it would be better to authorize the Legislature to assume the State debts, than to say positively it should be done. He considered the measure as just and that it would have a good effect to say something about the matter.

Mr Elseworth differed from Mr Sherman. As far as the State debts ought in equity to be assumed, he conceived that they might and would be so.

Mr Pinkney observed that a great part of the State debts were of such a nature that although in point of policy and true equity they ought, yet would they not be viewed in the light of federal expenditures.

Mr King thought the matter of more consequence than Mr Elseworth seemed to do; and that it was well worthy of commitment. Besides the considerations of justice and policy which had been mentioned, it might be remarked that the State Creditors an active and formidable party would otherwise be opposed to a plan which transferred to the Union the best resources of the States without transferring the State debts at the same time. The State Creditors had generally been the strongest foes to the impost-plan. The State debts probably were of greater amount than the federal. He would not say that it was practicable to consolidate the debts, but he thought it would be prudent to have the subject considered by a Committee

On Mr Rutlidge's motion, that a Comte be appointed to consider of the assumption &c N. H. no. Mass. ay. Ct ay. N. J. no. Pa div.d Del. no. Md no. Va ay. N. C. ay. S. C. ay. Geo. ay.

Mr Gerry's motion to provide for public securities, for stages on post roads, and for letters of marque & reprisal, were committed nem. con.

Mr King suggested that all unlocated lands of particular States ought to be given up if State debts were to be assumed:—Mr Williamson concurred in the idea.

A Grand Committee was appointed consisting of Mr Langdon, Mr King, Mr Sharman, Mr Livingston, Mr Clymer, Mr Dickenson, Mr McHenry, Mr Mason, Mr Williamson, Mr C. C. Pinkney, Mr Baldwin.

Mr Rutlidge remarked on the length of the Session,

the probable impatience of the public and the extreme anxiety of many members of the Convention to bring the business to an end; concluding with a motion that the Convention meet henceforward precisely at 10 Oc A. M. and that precisely at 4 Oc P. M. the President adjourn the House without motion for the purpose, and that no motion to adjourn sooner be allowed

On this question

N. H. ay. Mass. ay. C^{t} ay. N. J. ay. P^{a} no. Del. ay. M^{d} no. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

Mr Elseworth observed that a Council had not yet been provided for the President. He conceived there ought to be one. His proposition was that it should be composed of the President of the Senate, the Chief Justice, and the ministers as they might be estab^{d} for the departments of foreign & domestic affairs, war finance and marine, who should advise but not conclude the President.

Mr Pinkney wished the proposition to lie over, as notice had been given for a like purpose by Mr Govr Morris who was not then on the floor. His own idea was that the President sh^{d} be authorized to call for advice or not as he might chuse. Give him an able Council and it will thwart him; a weak one and he will shelter himself under their sanction.

Mr Gerry was agst letting the heads of the Departments, particularly of finance have any thing to do in business connected with legislation. He mentioned the Chief Justice also as particularly excep-

tionable. These men will also be so taken up with other matters as to neglect their own proper duties.

Mr. Dickenson urged that the great appointments should be made by the Legislature in which case they might properly be consulted by the Executive, but not if made by the Executive himself—This subject by general consent lay over; & the House proceeded to the clause "To raise armies."

Mr. Ghorum moved to add "and support" after "raise." Agreed to nem. con. and then the clause was agreed to nem. con. as amended

Mr. Gerry took notice that there was no check here agst. standing armies in time of peace. The existing Congs. is so constructed that it cannot of itself maintain an army. This wd. not be the case under the new system. The people were jealous on this head, and great opposition to the plan would spring from such an omission. He suspected that preparations of force were now making agst. it. (he seemed to allude to the activity of the Govr. of N. York at this crisis in disciplining the militia of that State.) He thought an army dangerous in time of peace & could never consent to a power to keep up an indefinite number. He proposed that there shall not be kept up in time of peace more than —— thousand troops. His idea was that the blank should be filled with two or three thousand.

Instead of "to build and equip fleets"—"to provide and maintain a navy" agreed to nem. con. as a more convenient definition of the power.

"To make rules for the Government and regulation of the land & naval forces," added from the existing Articles of Confederation.

Mr. L. Martin and Mr. Gerry now regularly moved "provided that in time of peace the army shall not consist of more than —— thousand men."

Genl. Pinkney asked whether no troops were ever to be raised untill an attack should be made on us?

Mr. Gerry. if there be no restriction, a few States may establish a military Govt.

Mr. Williamson, reminded him of Mr. Mason's motion for limiting the appropriation of revenue as the best guard in this case.

Mr. Langdon saw no room for Mr. Gerry's distrust of the Representatives of the people.

Mr. Dayton. preparations for war are generally made in peace; and a standing force of some sort may, for ought we know, become unavoidable. He should object to no restrictions consistent with these ideas.

The motion of Mr. Martin and Mr. Gerry was disagreed to nem. con.

Mr. Mason moved as an additionl power "to make laws for the regulation and discipline of the militia of the several States, reserving to the States the appointment of the officers." He considered uniformity as necessary in the regulation of the Militia throughout the Union.

Genl. Pinkney mentioned a case during the war in which a dissimilarity in the militia of different States had produced the most serious mischiefs. Uni-

formity was essential. The States would never keep up a proper discipline of their militia.

Mr Elseworth was for going as far in submitting the militia to the Genl Government as might be necessary, but thought the motion of Mr Mason went too far. He moved that the militia should have the same arms & exercise and be under rules established by the Genl Gov^t^ when in actual service of the U. States and when States neglect to provide regulations for militia, it sh^d^ be regulated & established by the Legislature of U. S. The whole authority over the militia ought by no means to be taken away from the States whose consequence would pine away to nothing after such a sacrifice of power. He thought the Genl Authority could not sufficiently pervade the Union for such a purpose, nor could it accommodate itself to the local genius of the people. It must be vain to ask the States to give the Militia out of their hands.

Mr Sherman 2^ds^ the motion.

Mr Dickenson. We are come now to a most important matter, that of the sword. His opinion was that the States never would nor ought to give up all authority over the Militia. He proposed to restrain the general power to one fourth part at a time, which by rotation would discipline the whole Militia.

Mr Butler urged the necessity of submitting the whole Militia to the general Authority, which had the care of the general defence.

Mr Mason. had suggested the idea of a select militia. He was led to think that would be in fact as much as

the Genl Gov^{t} could advantageously be charged with. He was afraid of creating insuperable objections to the plan. He withdrew his original motion, and moved a power "to make laws for regulating and disciplining the militia, not exceeding one tenth part in any one year, and reserving the appointment of officers to the States."

Genl Pinkney. renewed Mr Mason's original motion. For a part to be under the Genl and a part under the State Gov^{ts} w^{d} be an incurable evil. he saw no room for such distrust of the Genl Gov^{t}

Mr Langdon 2^{ds} General Pinkney's renewal. He saw no more reason to be afraid of the Genl Gov^{t} than of the State Gov^{ts} He was more apprehensive of the confusion of the different authorities on this subject, than of either.

Mr Madison thought the regulation of the Militia naturally appertaining to the authority charged with the public defence. It did not seem in its nature to be divisible between two distinct authorities. If the States would trust the Genl Gov^{t} with a power over the public treasure, they would from the same consideration of necessity grant it the direction of the public force. Those who had a full view of the public situation w^{d} from a sense of the danger, guard agst it: the States would not be separately impressed with the general situation, nor have the due confidence in the concurrent exertions of each other.

Mr Elseworth. considered the idea of a select militia as impracticable; & if it were not it would be followed by a ruinous declension of the great body

of the Militia. The States would never submit to the same militia laws. Three or four shillings as a penalty will enforce better obedience in New England, than forty lashes in some other places.

Mr Pinkney thought the power such an one as could not be abused, and that the States would see the necessity of surrendering it. He had however but a scanty faith in Militia. There must be also a real military force. This alone can effectually answer the purpose. The United States had been making an experiment without it, and we see the consequence in their rapid approaches toward anarchy.[1]

Mr Sherman, took notice that the States might want their militia for defence ag^st^ invasions and insurrections, and for enforcing obedience to their laws. They will not give up this point. In giving up that of taxation, they retain a concurrent power of raising money for their own use.

Mr Gerry thought this the last point remaining to be surrendered. If it be agreed to by the Convention, the plan will have as black a mark as was set on Cain. He had no such confidence in the Genl Gov^t^ as some gentlemen possessed, and believed it would be found that the States have not.

Col. Mason, thought there was great weight in the remarks of Mr Sherman, and moved an exception to his motion "of such part of the militia as might be required by the States for their own use."

[1] This had reference to the disorders particularly that had occurred in Massach^ts^ which had called for the interposition of the federal troops.—Madison's note.

Mr. Read doubted the propriety of leaving the appointment of the Militia officers in the States. In some States they are elected by the Legislatures; in others by the people themselves. He thought at least an appointment by the State Executives ought to be insisted on.

On committing to the grand Committee last appointed, the latter motion of Col. Mason, & the original one revived by Gel. Pinkney

N. H. ay. Mas. ay. Ct. no. N. J. no. Pa. ay. Del. ay. Md. divd. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Adjourned.

MONDAY AUGUST 20. IN CONVENTION

Mr. Pinkney submitted to the House, in order to be referred to the Committee of detail, the following propositions—"Each House shall be the judge of its own privileges, and shall have authority to punish by imprisonment every person violating the same, or who, in the place where the Legislature may be sitting and during the time of its Session, shall threaten any of its members for any thing said or done in the House; or who shall assault any of them therefor—or who shall assault or arrest any witness or other person ordered to attend either of the Houses in his way going or returning; or who shall rescue any person arrested by their order."

"Each branch of the Legislature, as well as the supreme Executive shall have authority to require

the opinions of the supreme Judicial Court upon important questions of law, and upon solemn occasions"

"The privileges and benefit of the Writ of Habeas corpus shall be enjoyed in this Government in the most expeditious and ample manner; and shall not be suspended by the Legislature except upon the most urgent and pressing occasions, and for a limited time not exceeding —— months."

"The liberty of the Press, shall be inviolably preserved"

"No troops shall be kept up in time of peace, but by consent of the Legislature"

"The military shall always be subordinate to the Civil power, and no grants of money shall be made by the Legislature for supporting military Land forces, for more than one year at a time"

"No soldier shall be quartered in any house in time of peace without consent of the owner."

"No person holding the office of President of the U. S. a Judge of their supreme Court, Secretary for the department of Foreign Affairs, of Finance, of Marine, of War, or of ——, shall be capable of holding at the same time any other office of Trust or emolument under the U. S. or an individual State."

"No religious test or qualification shall ever be annexed to any oath of office under the authority of the U. S."

"The U. S. shall be forever considered as one Body corporate and politic in law, and entitled to all the rights privileges and immunities, which to Bodies corporate ought to or do appertain"

"The Legislature of the U. S. shall have the power of making the Great Seal which shall be kept by the President of the U. S. or in his absence by the President of the Senate, to be used by them as the occasion may require.—It shall be called the Great Seal of the U. S. and shall be affixed to all laws."

"All commissions and writs shall run in the name of the U. S."

"The Jurisdiction of the Supreme Court shall be extended to all controversies between the U. S. and an individual State, or the U. S. and the Citizens of an individual State"

These propositions were referred to the Committee of detail without debate or consideration of them by the House.

Mr. Govr. Morris 2ded by Mr. Pinkney, submitted the following propositions which were in like manner referred to the Committee of Detail.

"To assist the President in conducting the Public affairs there shall be a Council of State composed of the following officers— 1. The Chief Justice of the Supreme Court, who shall from time to time recommend such alterations of and additions to the laws of the U. S. as may in his opinion be necessary to the due administration of Justice, and such as may promote useful learning and inculcate sound morality throughout the Union: He shall be President of the Council in the absence of the President.

2. The Secretary of Domestic affairs who shall be appointed by the President and hold his office during pleasure. It shall be his duty to attend to matters

of general police, the State of Agriculture and manufactures, the opening of roads and navigations, and the facilitating communications thro' the U. States; and he shall from time to time recommend such measures and establishments as may tend to promote those objects.

3. The Secretary of Commerce and Finance who shall also be appointed by the President during pleasure. It shall be his duty to superintend all matters relating to the public finances, to prepare & report plans of revenue and for the regulation of expenditures, and also to recommend such things as may in his Judgment promote the commercial interests of the U. S.

4. The Secretary of foreign affairs who shall also be appointed by the President during pleasure. It shall be his duty to correspond with all foreign Ministers, prepare plans of Treaties, & consider such as may be transmitted from abroad, and generally to attend to the interests of the U. S. in their connections with foreign powers.

5. The Secretary of War who shall also be appointed by the President during pleasure. It shall be his duty to superintend every thing relating to the war Department, such as the raising and equipping of troops, the care of military stores, public fortifications, arsenals & the like—also in time of war to prepare & recommend plans of offence and Defence.

6. The Secretary of the Marine who shall also be appointed during pleasure—It shall be his duty to superintend every thing relating to the Marine

Department, the public ships, Dock Yards, naval Stores & arsenals—also in the time of war to prepare and recommend plans of offence and defence.

The President shall also appoint a Secretary of State to hold his office during pleasure; who shall be Secretary to the Council of State, and also public Secretary to the President. It shall be his duty to prepare all Public dispatches from the President which he shall countersign

The President may from time to time submit any matter to the discussion of the Council of State, and he may require the written opinions of any one or more of the members: But he shall in all cases exercise his own judgment, and either Conform to such opinions or not as he may think proper; and every officer above mentioned shall be responsible for his opinion on the affairs relating to his particular Department.

Each of the officers above mentioned shall be liable to impeachment & removal from office for neglect of duty malversation or corruption"

Mr Gerry moved "that the Committee be instructed to report proper qualifications for the President, and a mode of trying the Supreme Judges in cases of impeachment.

The clause "to call forth the aid of the Militia &c. was postponed till report should be made as to the power over the Militia referred yesterday to the Grand Committee of eleven.

Mr Mason moved to enable Congress "to enact sumptuary laws." No Government can be main-

tained unless the manners be made consonant to it. Such a discretionary power may do good and can do no harm. A proper regulation of excises & of trade may do a great deal but it is best to have an express provision. It was objected to sumptuary laws that they were contrary to nature. This was a vulgar error. The love of distinction it is true is natural; but the object of sumptuary laws is not to extinguish this principle but to give it a proper direction.

Mr. Elseworth. The best remedy is to enforce taxes & debts. As far as the regulation of eating & drinking can be reasonable, it is provided for in the power of taxation.

Mr. Govr. Morris argued that sumptuary laws tended to create a landed nobility, by fixing in the great-landholders and their posterity their present possessions.

Mr. Gerry, the law of necessity is the best sumptuary law.

On Motion of Mr. Mason "as to sumptuary laws"

N. H. no. Mas. no. Ct. no. N. J. no. Pa. no. Del. ay. Md. ay. Va. no. N. C. no. S. C. no. Geo. ay.

"And to make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested, by this Constitution, in the Government of the U. S. or any department or officer thereof."

Mr. Madison and Mr. Pinkney moved to insert between "laws" and "necessary" "and establish all offices," it appearing to them liable to cavil that the latter was not included in the former.

Mr. Govr. Morris, Mr. Wilson, Mr. Rutlidge and Mr. Elseworth urged that the amendment could not be necessary.

On the motion for inserting "and establish all offices"

N. H. no. Mass. ay. Ct. no. N. J. no. Pa. no. Del. no. Md. ay. Va. no. N. C. no. S. C. no. Geo. no.

The clause as reported was then agreed to nem. con.

Art: VII Sect. 2. concerning Treason which see.

Mr. Madison, thought the definition too narrow. It did not appear to go as far as the Stat. of Edwd. III. He did not see why more latitude might not be left to the Legislature. It wd. be as safe as in the hands of State legislatures. And it was inconvenient to bar a discretion which experience might enlighten, and which might be applied to good purposes as well as be abused.

Mr. Mason was for pursuing the Stat: of Edwd. III.

Mr. Govr. Morris was for giving to the Union an exclusive right to declare what shd. be treason. In case of a contest between the U. S. and a particular State, the people of the latter must under the disjunctive terms of the clause, be traitors to one or other authority.

Mr. Randolph thought the clause defective in adopting the words, "in adhering" only. The British Stat: adds, "giving them aid and comfort" which had a more extensive meaning.

Mr. Elseworth considered the definition as the same in fact with that of the Statute.

Mr Govr Morris "adhering" does not go so far as "giving aid and comfort" or the latter words may be restrictive of "adhering," in either case the Statute is not pursued.

Mr Wilson held "giving aid and comfort" to be explanatory, not operative words; and that it was better to omit them.

Mr Dickenson, thought the addition of "giving aid and comfort" unnecessary & improper; being too vague and extending too far. He wished to know what was meant by the "testimony of two witnesses" whether they were to be witnesses to the same overt act or to different overt acts. He thought also that proof of an overt act ought to be expressed as essential in the case.

Doc^r^ Johnson considered "giving aid & comfort" as explanatory of "adhering" & that something should be inserted in the definition concerning overt acts. He contended that Treason could not be both ag^st^ the U. States—and individual States; being an offence ag^st^ the Sovereignty which can be but one in the same community.

Mr Madison remarked that "and" before "in adhering" should be changed into "or" otherwise both offences viz. of "levying war," & of adhering to the Enemy might be necessary to constitute Treason. He added that, as the definition here was of treason against *the U. S.* it would seem that the individual States w^d^ be left in possession of a concurrent power so far as to define & punish treason particularly ag^st^ themselves; which might involve double punishm^t^

It was moved that the whole clause be recommitted which was lost, the votes being equally divided.

N. H. no. Mas. no. Ct. no. N. J. ay. Pa. ay. Del. no. Md. ay. Va. ay. N. C. divd. S. C. no. Geo. ay.

Mr. Wilson & Doct. Johnson moved, that "or any of them," after "United States" be struck out in order to remove the embarrassment; which was agreed to nem. con.

Mr. Madison. This has not removed the embarrassment. The same Act might be treason agst. the United States as here defined—and agst. a particular State according to its laws.

Mr. Elseworth. There can be no danger to the genl. authority from this; as the laws of the U. States are to be paramount.

Doct. Johnson was still of opinion there could be no Treason agst. a particular State. It could not even at present, as the Confederation now stands, the Sovereignty being in the Union; much less can it be under the proposed system.

Col. Mason. The United States will have a qualified sovereignty only. The individual States will retain a part of the Sovereignty. An Act may be treason agst. a particular State which is not so agst. the U. States. He cited the Rebellion of Bacon in Virginia as an illustration of the doctrine.

Doct. Johnson: That case would amount to Treason agst. the Sovereign, the Supreme Sovereign, the United States.

Mr. King observed that the controversy relating to

Treason might be of less magnitude than was supposed; as the Legislature might punish capitally under other names than Treason.

Mr. Govr. Morris and Mr. Randolph wished to substitute the words of the British Statute and moved to postpone Sect 2. art VII in order to consider the following substitute—"Whereas it is essential to the preservation of liberty to define precisely and exclusively what shall constitute the crime of Treason, it is therefore ordained, declared & established, that if a man do levy war agst. the U. S. within their territories, or be adherent to the enemies of the U. S. within the said territories, giving them aid and comfort within their territories or elsewhere, and thereof be provably attainted of open deed by the people of his condition, he shall be adjudged guilty of Treason."

On this question

N. H.—Mas. no. Ct. no. N. J. ay. Pa. no. Del. no. Md. no. Va. ay. N. C. no. S. C. no. Geo. no.

It was then moved to strike out "agst. United States" after "treason" so as to define treason generally, and on this question

Mass. ay. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. no. N. C. no. S. C. ay. Geo. ay.

It was then moved to insert after "two witnesses" the words "to the same overt act."

Docr. Franklin wished this amendment to take place. prosecutions for treason were generally virulent; and perjury too easily made use of against innocence.

Mr Wilson. much may be said on both sides. Treason may sometimes be practised in such a manner, as to render proof extremely difficult—as in a traitorous correspondence with an Enemy.

On the question—as to some overt act

N. H. ay. Mass. ay. C^t^ ay. N. J. no. P^a^ ay. Del. ay. M^d^ ay. V^a^ no. N. C. no. S. C. ay. Geo. ay.

Mr King moved to insert before the word "power" the word "sole," giving the U. States the exclusive right to declare the punishment of Treason.

Mr Broom 2^ds^ the motion.

Mr Wilson in cases of a general nature, treason can only be ag^st^ the U— States, and in such they sh^d^ have the sole right to declare the punishment—yet in many cases it may be otherwise. The subject was however intricate and he distrusted his present judgment on it.

Mr King this amendment results from the vote defining treason generally by striking out ag^st^ the U. States, which excludes any treason ag^st^ particular States. These may however punish offences as high misdemesnors.

On inserting the word "sole." It passed in the negative

N. H. ay. Mas. ay. C^t^ no. N. J. no. P^a^ ay. Del. ay. M^d^ no. V^a^ no. N. C. no. S. C. ay. Geo. no—

Mr Wilson. the clause is ambiguous now. "Sole" ought either to have been inserted, or "against the U. S." to be re-instated.

Mr. King no line can be drawn between levying war and adhering to enemy agst. the U. States and agst. an individual State—Treason agst. the latter must be so agst. the former.

Mr. Sherman, resistance agst. the laws of the U. States as distinguished from resistance agst. the laws of a particular State, forms the line.

Mr. Elseworth, the U. S. are sovereign on one side of the line dividing the jurisdictions—the States on the other—each ought to have power to defend their respective Sovereignties.

Mr. Dickenson, war or insurrection agst. a member of the Union must be so agst. the whole body; but the constitution should be made clear on this point.

The clause was reconsidered nem. con—& then Mr. Wilson & Mr. Elseworth moved to reinstate "agst. the U. S." after "Treason—" on which question

N. H. no. Mass. no. Ct. ay. N. J. ay. Pa. no. Del. no. Md. ay. Va. ay. N. C. ay. S. C. no. Geo. ay.

Mr. Madison was not satisfied with the footing on which the clause now stood. As Treason agst. the U. States involves treason agst. particular States, and vice versa, the same act may be twice tried & punished by the different authorities. Mr. Govr. Morris viewed the matter in the same light—

It was moved & 2ded. to amend the sentence to read —"Treason agst. the U. S. shall consist only in levying war against them, or in adhering to their enemies" which was agreed to.

Col. Mason moved to insert the words "giving

them aid and comfort," as restrictive of "adhering to their Enemies &c." the latter he thought would be otherwise too indefinite—This motion was agreed to: Con^{t}: Del: & Georgia only being in the Negative.

Mr L. Martin moved to insert after conviction &c —"or on confession in open court"—and on the question (the negative States thinking the words superfluous) it was agreed to

N. H. ay. Mass. no. C^{t} ay. N. J. ay. P. ay. Del. ay. M^{d} ay. V^{a} ay. N. C. div^{d} S. C. no. Geo. no.

Art: VII. Sect. 2, as amended was then agreed to nem. con.

Sect. 3. taken up. "white & other" struck out nem. con. as superfluous.

Mr Elseworth moved to require the first census to be taken within "three" instead of "six" years from the first meeting of the Legislature—and on question

N. H: ay. Mass. ay. C^{t} ay. N. J. ay. P^{a} ay. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. no. Geo. no.

Mr King asked what was the precise meaning of *direct* taxation? No one answ^{d}

Mr Gerry moved to add to the 3^{d} Sect. Art: VII. the following clause "That from the first meeting of the Legislature of the U. S. until a Census shall be taken all monies for supplying the public Treasury by direct taxation shall be raised from the several States according to the number of their Representatives respectively in the first branch"

Mr Langdon. This would bear unreasonably hard on N. H. and he must be ag^st^ it.

Mr Carrol opposed it. The number of Rep^s^ did not admit of a proportion exact enough for a rule of taxation.

Before any question the House

Adjourned.

TUESDAY AUGUST 21. IN CONVENTION

Governour Livingston [1] from the Committee of Eleven to whom was referred the propositions respecting the debts of the several States and also the Militia entered on the 18th inst: delivered the following report:

"The Legislature of the U. S. shall have power to fulfil the engagements which have been entered into by Congress, and to discharge as well the debts of the U. S. as the debts incurred by the several States during the late war, for the common defence and general welfare"

"To make laws for organizing arming and disciplining the militia, and for governing such part of them as may be employed in the service of the U. S. reserving to the States respectively, the appointment of the

[1] "Governor Livingston is confessedly a Man of the first rate talents, but he appears to me rather to indulge a sportiveness of wit, than a strength of thinking. He is however equal to anything, from the extensiveness of his education and genius. His writings teem with satyr and a neatness of style. But he is no Orator, and seems little acquainted with the guiles of policy. He is about 60 years old, and remarkably healthy."—Pierce's notes, *Am. Hist. Rev.*, iii., 327.

officers, and the authority of training the militia according to the discipline prescribed by the U. States"

Mr. Gerry considered giving the power only, without adopting the obligation, as destroying the security now enjoyed by the public creditors of the U— States. He enlarged on the merit of this class of citizens, and the solemn faith which had been pledged under the existing Confederation. If their situation should be changed as here proposed great opposition would be excited agst. the plan. He urged also that as the States had made different degrees of exertion to sink their respective debts, those who had done most would be alarmed, if they were now to be saddled with a share of the debts of States which had done least.

Mr. Sharman. It means neither more nor less than the confederation as it relates to this subject.

Mr. Elseworth moved that the Report delivered in by Govr. Livingston should lie on the table.—Agreed to nem. con.

Art: VII. Sect. 3 resumed.—Mr. Dickinson moved to postpone this in order to reconsider Art: IV. Sect. 4. and to *limit* the number of representatives to be allowed to the large States. Unless this were done the small States would be reduced to entire insignificancy, and encouragement given to the importation of slaves.

Mr. Sherman would agree to such a reconsideration, but did not see the necessity of postponing the section before the House.—Mr. Dickenson withdrew his motion.

Art: VII. Sect 3. then agreed to 10 ays, Delaware alone being no.

Mr Sherman moved to add to Sect 3. the following clause "And all accounts of supplies furnished, services performed, and monies advanced by the several States to the U. States, or by the U. S. to the several States shall be adjusted by the same rule"

Mr Govern[r] Morris 2[ds] the motion.

Mr Ghorum, thought it wrong to insert this in the Constitution. The Legislature will no doubt do what is right. The present Congress have such a power and are now exercising it.

Mr Sherman unless some rule be expressly given none will exist under the new system.

Mr Elseworth. Though The contracts of Congress will be binding, there will be no rule for executing them on the States; and one ought to be provided.

Mr Sherman withdrew his motion to make way for one of Mr Williamson to add to Sect. 3. "By this rule the several quotas of the States shall be determined in settling the expences of the late war."

Mr Carrol brought into view the difficulty that might arise on this subject from the establishment of the Constitution as intended without the *unanimous* consent of the States

Mr Williamson's motion was postponed nem. con.

Art: VI Sect. 12. which had been postponed of Aug: 15. was now called for by Col. Mason, who wished to know how the proposed amendment as to money bills would be decided, before he agreed to any further points.

Mr Gerry's motion of yesterday that previous to a census, direct taxation be proportioned on the States according to the number of Representatives, was taken up. He observed that the principal acts of Government would probably take place within that period, and it was but reasonable that the States should pay in proportion to their share in them.

Mr Elseworth thought such a rule unjust. there was a great difference between the number of Represents and the number of inhabitants as a rule in this case. Even if the former were proportioned as nearly as possible to the latter, it would be a very inaccurate rule. A State might have one Representative only that had inhabitants enough for 1½ or more, if fractions could be applied, &c—. He proposed to amend the motion by adding the words, "subject to a final liquidation by the foregoing rule when a census shall have been taken"

Mr Madison. The last appointment of Congs on which the number of Representatives was founded, was conjectural and meant only as a temporary rule till a Census should be established.

Mr Read. The requisitions of Congs had been accommodated to the impoverishment produced by the war; and to other local and temporary circumstances.

Mr Williamson opposed Mr Gerry's motion.

Mr Langdon was not here when N. H. was allowed three members. If it was more than her share; he did not wish for them.

Mr Butler contended warmly for Mr Gerry's motion as founded in reason and equity.

Mr Elseworth's proviso to Mr Gerry's motion was agreed to nem. con.

Mr King thought the power of taxation given to the Legislature rendered the motion of Mr Gerry altogether unnecessary.

On Mr Gerry's motion as amended

N. H. no. Mass. ay. C^t^ no. N. J. no. P^a^ no. Del. no. M^d^ no. V^a^ no. N. C. div^d^. S. C. ay. Geo. no.

On a question, Shall Art: VI Sect. 12. with the amendment to it proposed & entered on the 15 instant, as called for by Col. Mason be now taken up? it passed in the negative.

N. H. ay. Mass. no. C^t^ ay. N. J. no. P^a^ no. Del. no. M^d^ ay. V^a^ ay. N. C. ay. S. C. no. Geo. no.

Mr L. Martin. The power of taxation is most likely to be critcisied by the public. Direct taxation should not be used but in cases of absolute necessity; and then the States will be the best Judges of the mode. He therefore moved the following addition to Sect: 3: Art VII "And whenever the Legislature of the U. S. shall find it necessary that revenue should be raised by direct taxation, having apportioned the same, according to the above rule on the several States, requisitions shall be made of the respective States to pay into the Continental Treasury their respective quotas within a time in the said requisitions specified; and in case of any of the States

failing to comply with such requisitions, then and then only to devise and pass acts directing the mode, and authorizing the collection of the same."

Mr. McHenry 2ded the motion—there was no debate, and on the question

N. H. no. Ct. no. N. J. ay. Pens. no. Del. no. Md. divd. (Jenifer & Carol no) Vs. no. N. C. no. S. C. no. Geo. no.

Art. VII. Sect. 4.—Mr. Langdon, by this section the States are left at liberty to tax exports. N. H. therefore with other non-exporting States, will be subject to be taxed by the States exporting its produce. This could not be admitted. It seems to be feared that the Northern States will oppress the trade of the Souths. This may be guarded agst. by requiring the concurrence of ⅔ or ¾ of the legislature in such cases.

Mr. Elseworth. It is best as it stands. The power of regulating trade between the States will protect them agst. each other. Should this not be the case, the attempts of one to tax the produce of another passing through its hands, will force a direct exportation and defeat themselves. There are solid reasons agst. Congs. taxing exports. 1. it will discourage industry, as taxes on imports discourage luxury. 2. The produce of different States is such as to prevent uniformity in such taxes. There are indeed but a few articles that could be taxed at all; as Tobo. rice & indigo, and a tax on these alone would be partial & unjust. 3. The taxing of exports would engender incurable jealousies.

Mr Williamson. Tho' N. C. has been taxed by Virga by a duty on 12000 Hhs of her Tobo exported thro' Virga yet he would never agree to this power. Should it take place, it would destroy the last hope of an adoption of the plan.

Mr Govr Morris. These local considerations ought not to impede the general interest. There is great weight in the argument, that the exporting States will tax the produce of their uncommercial neighbours. The power of regulating the trade between Pa & N. Jersey will never prevent the former from taxing the latter. Nor will such a tax force a direct exportation from N. Jersey. The advantages possessed by a large trading City, outweigh the disadvantage of a moderate duty; and will retain the trade in that channel. If no tax can be laid on exports, an embargo cannot be laid though in time of war such a measure may be of critical importance. Tobacco, lumber and live-stock are three objects belonging to different States, of which great advantage might be made by a power to tax exports. To these may be added Genseng and Masts for Ships by which a tax might be thrown on other nations. The idea of supplying the West Indies with lumber from Nova Scotia is one of the many follies of lord Sheffield's pamphlets. The State of the Country also will change, and render duties on exports, as skins, beaver & other peculiar raw materials, politic in the view of encouraging American manufactures.

Mr Butler was strenuously opposed to a power over exports, as unjust and alarming to the staple States.

Mr Langdon suggested a prohibition on the States from taxing the produce of other States exported from their harbours.

Mr Dickenson. The power of taxing exports may be inconvenient at present; but it must be of dangerous consequence to prohibit it with respect to all articles and for ever. He thought it would be better to except particular articles from the power.

Mr Sherman. It is best to prohibit the National legislature in all cases. The States will never give up all power over trade. An enumeration of particular articles would be difficult invidious and improper

Mr Madison As we ought to be governed by national and permanent views, it is a sufficient argument for giving ye power over exports that a tax, tho' it may not be expedient at present, may be so hereafter. A porper regulation of exports may & probably will be necessary hereafter, and for the same purposes as the regulation of imports; viz, for revenue—domestic manufactures—and procuring equitable regulations from other nations. An Embargo may be of absolute necessity, and can alone be effectuated by the Genl authority. The regulation of trade between State and State cannot effect more than indirectly to hinder a State from taxing its own exports; by authorizing its Citizens to carry their commodities freely into a neighbouring State which might decline taxing exports in order to draw into its channel the trade of its neighbours. As to the fear of disproportionate burthens on the more exporting States, it might be remarked that it was

agreed on all hands that the revenue w^d^ principally be drawn from trade, and as only a given revenue would be needed, it was not material whether all should be drawn wholly from imports—or half from those, and half from exports. The imports and exports must be pretty nearly equal in every State—and relatively the same among the different States.

Mr Elseworth did not conceive an embargo by the Congress interdicted by this section.

M^r^ M^c^Henry conceived that power to be included in the power of war.

Mr Wilson. Pennsylvania exports the produce of Mary^d^ N. Jersey, Delaware & will by & by when the River Delaware is opened, export for N. York. In favoring the general power over exports therefore, he opposed the particular interest of his State. He remarked that the power had been attacked by reasoning which could only have held good in case the Genl Gov^t^ had been *compelled*, instead of *authorized*, to lay duties on exports. To deny this power is to take from the Common Gov^t^ half the regulation of trade. It was his opinion that a power over exports might be more effectual than that over imports in obtaining beneficial treaties of commerce

Mr Gerry was strenuously opposed to the power over exports. It might be made use of to compel the States to comply with the will of the Genl Government, and to grant it any new powers which might be demanded. We have given it more power already than we know how will be exercised.

It will enable the Gen! Gov! to oppress the States as much as Ireland is oppressed by Great Britain.

M! Fitzimmons[1] would be ag!! a tax on exports to be laid immediately; but was for giving a power of laying the tax when a proper time may call for it. This would certainly be the case when America should become a manufacturing Country. He illustrated his argument by the duties in G. Britain on wool &c.

Col. Mason. If he were for reducing the States to mere corporations as seemed to be the tendency of some arguments, he should be for subjecting their exports as well as imports to a power of general taxation. He went on a principle often advanced & in which he concurred, that "a majority when interested will oppress the minority." This maxim had been verified by our own Legislature (of Virginia). If we compare the States in this point of view the 8 Northern States have an interest different from the five South! States; and have in one branch of the legislature 36 votes ag!! 29. and in the other in the proportion of 8 ag!! 5. The Southern States had therefore ground for their suspicions. The case of Exports was not the same with that of imports. The latter were the same throughout the States; the former very different. As to Tobacco other nations do raise it, and are capable of raising it as well as Virg! &c. The impolicy of taxing that article had been demonstrated by the experiment of Virginia.

[1] "Mr. Fitzsimons is a Merchant of considerable talents, and speaks very well I am told, in the Legislature of Pennsylvania. He is about 40 years old."—Pierce's notes, *Am. Hist. Rev.*, iii., 328.

Mr Clymer [1] remarked that every State might reason with regard to its particular productions, in the same manner as the Southern States. The middle States may apprehend an oppression of their wheat flour, provisions &c. and with more reason, as these articles were exposed to a competition in foreign markets not incident to Tob^o^ rice &c. They may apprehend also combinations ag^st^ them between the Eastern & Southern States as much as the latter can apprehend them between the Eastern & middle. He moved as a qualification of the power of taxing Exports that it should be restrained to regulations of trade by inserting after the word "duty" sect 4 art VII the words, "for the purpose of revenue."

On question on Mr Clymer's motion

N. H. no. Mass. no. C^t^ no. N. J. ay. P^a^ ay. Del. ay. M^d^ no. V^a^ no. N. C. no. S. C. no. Geo. no.

Mr Madison. In order to require $\frac{2}{3}$ of each House to tax exports, as a lesser evil than a total prohibition moved to insert the words "unless by consent of two thirds of the Legislature"

Mr Wilson 2^ds^ and on this question, it passed in the Negative.

N. H. ay. Mass. ay. C^t^ no. N. J. ay. P^a^ ay. Del. ay. M^d^ no. V^a^ no (Col. Mason, Mr Randolph Mr Blair no. Genl Washington & J. M. ay.) N. C. no. S. C. no. Geo. no.

[1] "Mr. Clymer is a Lawyer of some abilities;—he is a respectable Man and much esteemed. Mr. Clymer is about 40 years old."—Pierce's Notes, *Am. Hist. Rev.*, iii., 328.

Question on Sect: 4. Art VII. as far as to "no tax shl be laid on exports—it passed in the affirmative.

N. H. no. Mass. ay. Ct ay. N. J. no. Pa no. Del. no. Md ay. Va ay. (Genl W. & J. M. no) N. C. ay. S. C. ay. Geo. ay.

Mr L. Martin, proposed to vary the Sect: 4. art VII so as to allow a prohibition or tax on the importation of slaves. 1. as five slaves are to be counted as 3 free men in the apportionment of Representatives; such a clause would leave an encouragement to this trafic. 2 slaves weakened one part of the Union which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. 3. it was inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution.

Mr Rutlidge did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrections and would readily exempt the other States from the obligation to protect the Southern against them. Religion & humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is whether the Southn States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of slaves which will increase the commodities of which they will become the carriers.

Mr Elseworth was for leaving the clause as it stands, let every State import what it pleases. The

morality or wisdom of slavery are considerations belonging to the States themselves. What enriches a part enriches the whole, and the States are the best judges of their particular interest. The old confederation had not meddled with this point, and he did not see any greater necessity for bringing it within the policy of the new one:

Mr Pinkney. South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of Congress, that State has expressly & watchfully excepted that of meddling with the importation of negroes. If the States be all left at liberty on this subject, S. Carolina may perhaps by degrees do of herself what is wished, as Virginia & Maryland already have done.

Adjourned.

WEDNESDAY AUGUST 22. IN CONVENTION.

Art VII sect 4. resumed. Mr Sherman was for leaving the clause as it stands. He disapproved of the slave trade; yet as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, & as it was expedient to have as few objections as possible to the proposed scheme of Government, he thought it best to leave the matter as we find it. He observed that the abolition of Slavery seemed to be going on in the U. S. & that the good sense of the several States would probably by degrees compleat

it. He urged on the Convention the necessity of despatching its business.

Col. Mason. This infernal traffic originated in the avarice of British Merchants. The British Gov^t^ constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing States alone but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the Enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves, as it did by the Tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell to the Commissioners sent to Virginia, to arm the servants & slaves, in case other means of obtaining its submission should fail. Maryland & Virginia he said had already prohibited the importation of slaves expressly. N. Carolina had done the same in substance. All this would be in vain, if S. Carolina & Georgia be at liberty to import. The Western people are already calling out for slaves for their new lands, and will fill that Country with slaves if they can be got thro' S. Carolina & Georgia. Slavery discourages arts & manufactures. The poor despise labor when performed by slaves. They prevent the immigration of Whites, who really enrich & strengthen a Country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of heaven on a Country. As nations can not

be rewarded or punished in the next world they must be in this. By an inevitable chain of causes & effects providence punishes national sins, by national calamities. He lamented that some of our Eastern brethren had from a lust of gain embarked in this nefarious traffic. As to the States being in possession of the Right to import, this was the case with many other rights, now to be properly given up. He held it essential in every point of view that the Genl Gov^{t} should have power to prevent the increase of slavery.

Mr Elseworth. As he had never owned a slave could not judge of the effects of slavery on character. He said however that if it was to be considered in a moral light we ought to go farther and free those already in the Country.—As slaves also multiply so fast in Virginia & Maryland that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we go no farther than is urged, we shall be unjust towards S. Carolina & Georgia. Let us not intermeddle. As population increases, poor laborers will be so plenty as to render slaves useless. Slavery in time will not be a speck in our Country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts. As to the danger of insurrections from foreign influence, that will become a motive to kind treatment of the slaves.

Mr Pinkney. If slavery be wrong, it is justified by the example of all the world. He cited the case

of Greece Rome & other antient States; the sanction given by France England, Holland & other modern States. In all ages one half of mankind have been slaves. If the S. States were let alone they will probably of themselves stop importations. He wd himself as a citizen of S. Carolina vote for it. An attempt to take away the right as proposed will produce serious objections to the Constitution which he wished to see adopted.

General Pinkney declared it to be his firm opinion that if himself & all his colleagues were to sign the Constitution & use their personal influence, it would be of no avail towards obtaining the assent of their Constituents. S. Carolina & Georgia cannot do without slaves. As to Virginia she will gain by stopping the importations. Her slaves will rise in value, & she has more than she wants. It would be unequal to require S. C. & Georgia to confederate on such unequal terms. He said the Royal assent before the Revolution had never been refused to S. Carolina as to Virginia. He contended that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; The more consumption also, and the more of this, the more revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied like other imports, but should consider a rejection of the clause as an exclusion of S. Carol[a] from the Union.

Mr Baldwin had conceived national objects alone to be before the Convention, not such as like the

present were of a local nature. Georgia was decided on this point. That State has always hitherto supposed a Genl Governm^t to be the pursuit of the central States who wished to have a vortex for every thing—that her distance would preclude her from equal advantage—& that she could not prudently purchase it by yielding national powers. From this it might be understood in what light she would view an attempt to abridge one of her favorite prerogatives. If left to herself, she may probably put a stop to the evil. As one ground for this conjecture, he took notice of the sect of ——— which he said was a respectable class of people, who carried their ethics beyond the mere *equality of men*, extending their humanity to the claims of the whole animal creation.

Mr Wilson observed that if S. C. & Georgia were themselves disposed to get rid of the importation of slaves in a short time as had been suggested, they would never refuse to Unite because the importation might be prohibited. As the section now stands all articles imported are to be taxed. Slaves alone are exempt. This is in fact a bounty on that article.

Mr Gerry thought we had nothing to do with the conduct of the States as to Slaves, but ought to be careful not to give any sanction to it.

Mr Dickenson considered it as inadmissible on every principle of honor & safety that the importation of slaves should be authorized to the States by the Constitution. The true question was whether

the national happiness would be promoted or impeded by the importation. and this question ought to be left to the National Gov[t] not to the States particularly interested. If Eng[d] & France permit slavery, slaves are at the same time excluded from both those kingdoms. Greece and Rome were made unhappy by their slaves. He could not believe that the South[n] States would refuse to confederate on the account apprehended: especially as the power was not likely to be immediately exercised by the Gen[l] Government.

M[r] Williamson stated the law of N. Carolina on the subject. to-wit that it did not directly prohibit the importation of slaves. It imposed a duty of £5 on each slave imported from Africa, £10 on each from elsewhere. & £50 on each from a State licensing manumission. He thought the S. States could not be members of the Union if the clause sh[d] be rejected. and that it was wrong to force any thing down not absolutely necessary. and which any State must disagree to.

M[r] King thought the subject should be considered in a political light only. If two States will not agree to the Constitution as stated on one side, he could affirm with equal belief on the other, that great & equal opposition would be experienced from the other States. He remarked on the exemption of slaves from duty whilst every other import was subjected to it. as an inequality that could not fail to strike the commercial sagacity of the North[n] & Middle States.

Mr Langdon was strenuous for giving the power to the Genl Gov^t^ He c^d^ not with a good conscience leave it with the States who could then go on with the traffic, without being restrained by the opinions here given that they will themselves cease to import slaves.

Genl Pinkney thought himself bound to declare candidly that he did not think S. Carolina would stop her importations of slaves in any short time, but only stop them occasionally as she now does. He moved to commit the clause that slaves might be made liable to an equal tax with other imports which he thought right & wch w^d^ remove one difficulty that had been started.

Mr Rutlidge. If the Convention thinks that N. C. S. C. & Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools as to give up so important an interest. He was strenuous ag^st^ striking out the section, and seconded the motion of Genl Pinkney for a commitment.

Mr Govr Morris wished the whole subject to be committed including the clauses relating to taxes on exports & to a navigation act. These things may form a bargain among the Northern & Southern States.

Mr Butler declared that he never would agree to the power of taxing exports.

Mr Sherman said it was better to let the S. States import slaves than to part with them, if they made

that a sine qua non. He was opposed to a tax on slaves imported as making the matter worse, because it implied they were *property*. He acknowledged that if the power of prohibiting the importation should be given to the Gen[l] Government that it would be exercised. He thought it would be its duty to exercise the power.

M[r] Read was for the commitment provided the clause concerning taxes on exports should also be committed.

M[r] Sherman observed that that clause had been agreed to & therefore could not be committed.

M[r] Randolph was for committing in order that some middle ground might, if possible, be found. He could never agree to the clause as it stands. He w[d] sooner risk the constitution. He dwelt on the dilemma to which the Convention was exposed. By agreeing to the clause, it would revolt the Quakers, the Methodists, and many others in the States having no slaves. On the other hand, two States might be lost to the Union. Let us then, he said, try the chance of a commitment.

On the question for committing the remaining part of Sect. 4 & 5. of Art: 7. N. H. no. Mass. abs[t] Con[t] ay N. J. ay P[a] no. Del. no Mary[d] ay. V[a] ay. N. C. ay S. C. ay. Geo. ay.

M[r] Pinkney & M[r] Langdon moved to commit Sect. 6. as to navigation act by two thirds of each House

M[r] Gorham did not see the propriety of it. Is it meant to require a greater proportion of votes? He desired it to be remembered that the Eastern States

had no motive to Union but a commercial one. They were able to protect themselves. They were not afraid of external danger, and did not need the aid of the South^n^ States.

Mr Wilson wished for a commitment in order to reduce the proportion of votes required.

Mr Elseworth was for taking the plan as it is. This widening of opinions has a threatening aspect. If we do not agree on this middle & moderate ground he was afraid we should lose two States, with such others as may be disposed to stand aloof, should fly into a variety of shapes & directions, and most probably into several confederations and not without bloodshed.

On Question for committing 6 Sect. as to navigation act to a member from each State—N. H. ay. Mas. ay. C^t^ no. N. J. no. P^a^ ay. Del. ay. M^d^ ay. V^a^ ay. N. C. ay. S. C. ay. Geo. ay.

The Committee appointed were Mr Langdon, King, Johnson, Livingston, Clymer, Dickenson, L. Martin, Madison, Williamson, C. C. Pinkney, & Baldwin.

To this committee were referred also the two clauses above mentioned, of the 4 & 5. Sect: of Art. 7.

Mr Rutlidge from the Committee to whom were referred on the 18 & 20th instant the propositions of Mr Madison & Mr Pinkney made the Report following: [1]

[1] Madison's note says: ("Here insert Report from Journal of the Convention of the date.") It is found on p. 227, 228, of the Journal and is as above.

"The committee report, that in their opinion the following additions should be made to the report now before the convention, namely,

"At the end of the first clause of the first section of the seventh article add, 'for payment of the debts and necessary expenses of the United States; provided that no law for raising any branch of revenue, except what may be specially appropriated for the payment of interest on debts or loans, shall continue in force for more than ——— years.'

"At the end of the second clause, second section, seventh article, add, 'and with Indians, within the limits of any state, not subject to the laws thereof.'

"At the end of the sixteenth clause of the second section, seventh article, add, 'and to provide, as may become necessary, from time to time, for the well managing and securing the common property and general interests and welfare of the United States in such manner as shall not interfere with the governments of individual states, in matters which respect only their internal police, or for which their individual authority may be competent.'

"At the end of the first section, tenth article, add, 'he shall be of the age of thirty-five years, and a citizen of the United States, and shall have been an inhabitant thereof for twenty-one years.'

"After the second section of the tenth article, insert the following as a third section:

"'The President of the United States shall have a privy council, which shall consist of the president of the senate, the speaker of the house of represen-

tatives, the chief justice of the supreme court, and the principal officer in the respective departments of foreign affairs, domestic affairs, war, marine, and finance, as such departments of office shall from time to time be established, whose duty it shall be to advise him in matters respecting the execution of his office, which he shall think proper to lay before them: but their advice shall not conclude him, nor affect his responsibility for the measures which he shall adopt.'

"At the end of the second section of the eleventh article, add, 'the judges of the supreme court shall be triable by the senate, on impeachment by the house of representatives.'

"Between the fourth and fifth lines of the third section of the eleventh article, after the word 'controversies,' insert, 'between the United States and an individual state, or the United States and an individual person.'"

A motion to rescind the order of the House respecting the hours of meeting & adjourning, was negatived: Mass: Pa Del. Mard ay N. H. Con: N. J. Va N. C. S. C. Geo. no.

Mr Gerry and Mr McHenry moved to insert after the 2d Sect. Art: 7, the clause following, to wit, "The Legislature shall pass no bill of attainder nor any ex post facto law." [1]

Mr Gerry urged the necessity of this prohibition,

[1] The proceedings on this motion involving the two questions on "attainders and ex post facto laws," are not so fully stated in the printed Journal.—Madison's note.

which he said was greater in the National than the State Legislature, because the number of members in the former being fewer, they were on that account the more to be feared.

Mr. Govr. Morris thought the precaution as to ex post facto laws unnecessary; but essential as to bills of attainder

Mr. Elseworth contended that there was no lawyer, no civilian who would not say that ex post facto laws were void of themselves. It cannot then be necessary to prohibit them.

Mr. Wilson was against inserting any thing in the Constitution as to ex post facto laws. It will bring reflextions on the Constitution—and proclaim that we are ignorant of the first principles of Legislation, or are constituting a Government that will be so.

The question being divided, The first part of the motion relating to bills of attainder was agreed to nem contradicente.

On the second part relating to ex post facto laws—

Mr. Carrol remarked that experience overruled all other calculations. It had proved that in whatever light they might be viewed by civilians or others, the State Legislatures had passed them, and they had taken effect.

Mr. Wilson. If these prohibitions in the State Constitutions have no effect, it will be useless to insert them in this Constitution. Besides, both sides will agree to the principle, and will differ as to its application.

Mr. Williamson. Such a prohibitory clause is in

the Constitution of N. Carolina, and tho it has been violated, it has done good there & may do good here, because the Judges can take hold of it.

Doc^{r} Johnson thought the clause unnecessary, and implying an improper suspicion of the National Legislature.

Mr Rutlidge was in favor of the clause.

On the question for inserting the prohibition of ex post facto laws.

N. H. ay. Mas. ay. Con^{t} no. N. J. no. P^{a} no. Del. ay. M^{d} ay. Virg^{a} ay N. C. div^{d} S. C. ay. Geo. ay.

The report of the committee of 5. made by Mr Rutlidge, was taken up and then postponed that each member might furnish himself with a copy.

The Report of the Committee of Eleven delivered in & entered on the Journal of the 21st inst. was then taken up, and the first clause containing the words "The Legislature of the U. S. *shall have power* to fulfil the engagements which have been entered into by Congress" being under consideration,

Mr Elseworth argued that they were unnecessary. The U. S. heretofore entered into Engagements by Cong^{s} who were their Agents. They will hereafter be bound to fulfil them by their new agents.

Mr Randolph thought such a provision necessary: for though the U. States will be bound, the new Gov^{t} will have no authority in the case unless it be given to them.

Mr Madison thought it necessary to give the authority in order to prevent misconstruction. He

mentioned the attempts made by the Debtors to British subjects to shew that contracts under the old Government, were dissolved by the Revolution which destroyed the political identity of the Society.

Mr Gerry thought it essential that some explicit provision should be made on this subject, so that no pretext might remain for getting rid of the public engagements.

Mr Govr Morris moved by way of amendment to substitute—"The Legislature *shall* discharge the debts & fulfil the engagements of the U. States."

It was moved to vary the amendment by striking out "discharge the debts" & to insert "liquidate the claims," which being negatived,

The amendment moved by Mr Govr Morris was agreed to all the States being in the affirmative.

It was moved & 2ded to strike the following words out of the 2d clause of the report "and the authority of training the militia according to the discipline prescribed by the U. S." Before a question was taken

The House adjourned.

THURSDAY IN CONVENTION AUG: 23, 1787

The Report of the Committee of Eleven made Aug: 21. being taken up, and the following clause being under consideration to wit "To make laws for organizing, arming & disciplining the Militia, and for governing such parts of them as may be em-

ployed in the service of the U. S. reserving to the States respectively, the appointment of the officers, and authority of training the militia according to the discipline prescribed"

Mr Sherman moved to strike out the last member "and authority of training &c. He thought it unnecessary. The States will have this authority of course if not given up.

Mr Elseworth doubted the propriety of striking out the sentence. The reason assigned applies as well to the other reservation of the appointment to offices. He remarked at the same time that the term discipline was of vast extent and might be so expounded as to include all power on the subject.

Mr King, by way of explanation, said that by *organizing*, the Committee meant, proportioning the officers & men—by *arming*, specifying the kind size & caliber of arms—& by *disciplining*, prescribing the manual exercise evolutions &c.

Mr Sherman withdrew his motion.

Mr Gerry. This power in the U. S. as explained is making the States drill-sergeants. He had as lief let the Citizens of Massachusetts be disarmed, as to take the command from the States, and subject them to the Genl Legislature. It would be regarded as a system of Despotism.

Mr Madison observed that "*arming*" as explained did not extend to furnishing arms; nor the term "*disciplining*" to penalties & Courts Martial for enforcing them.

Mr King added to his former explanation that

arming meant not only to provide for uniformity of arms, but included the authority to regulate the modes of furnishing, either by the militia themselves, the State Governments, or the National Treasury; that *laws* for disciplining, must involve penalties and every thing necessary for enforcing penalties.

Mr. Dayton moved to postpone the paragraph, in order to take up the following proposition

"To establish an uniform & general system of discipline for the Militia of these States, and to make laws for organizing, arming, disciplining & governing *such part of them as may be employed in the service of the U. S.*, reserving to the States respectively the appointment of the officers, and all authority over the militia not herein given to the General Government"

On the question to postpone in favor of this proposition; it passed in the Negative

N. H. no. Mas. no. Ct. no. N. J. ay. P. no. Del. no. Maryd. ay. Va. no. N. C. no. S. C. no. Geo. ay.

Mr. Elseworth & Mr. Sherman moved to postpone the 2d. clause in favor of the following

"To establish an uniformity of arms, exercise & organization for the militia, and to provide for the Government of them when called into the service of the U. States"

The object of this proposition was to refer the plan for the Militia to the General Govt. but to leave the execution of it to the State Govts.

Mr. Langdon said he could not understand the jealousy expressed by some Gentlemen. The General & State Govts were not enemies to each other, but different institutions for the good of the people of America. As one of the people he could say, the National Govt is mine, the State Govt is mine. In transferring power from one to the other, I only take out of my left hand what it cannot so well use, and put it into my right hand where it can be better used.

Mr Gerry thought it was rather taking out of the right hand & putting it into the left. Will any man say that liberty will be as safe in the hands of eighty or a hundred men taken from the whole continent, as in the hands of two or three hundred taken from a single State.

Mr Dayton was against so absolute a uniformity. In some States there ought to be a greater proportion of cavalry than in others. In some places rifles would be most proper, in others muskets &c.

Genl Pinkney preferred the clause reported by the Committee, extending the meaning of it to the case of fines &c

Mr Madison. The primary object is to secure an effectual discipline of the Militia. This will no more be done if left to the States separately than the requisitions have been hitherto paid by them. The States neglect their Militia now, and the more they are consolidated into one nation, the less each will rely on its own interior provisions for its safety & the less prepare its Militia for that purpose; in like

disunion of the States, it is necessary to guard ag[st] it by sufficient powers to the Common gov[t] and as the greatest danger to liberty is from large standing armies, it is best to prevent them by an effectual provision for a good Militia.

On the Question to agree to M[r] Madison's motion

N. H. ay. Mas. no. C[t] no. N. J. no. P[a] no. Del. no. M[d] no. V[a] no. N. C. no. S. C. ay. Geo. ay.[1]

On the question to agree to the "reserving to the States the appointment of the officers." It was agreed to nem: contrad:

On the question on the clause "and the authority of training the Militia according to the discipline prescribed by the U. S."—

N. H. ay. Mas. ay. C[t] ay. N. J. ay. P[a] ay. Del. no. M[d] ay. V[a] no. N. C. ay. S. C. no. Geo. ay.

On the question to agree to Art. VII. Sect. 7. as reported it passed nem: contrad:

M[r] Pinkney urged the necessity of preserving Foreign Ministers & other officers of the U. S. independent of external influence and moved to insert, in Art. VII Sect 7. the clause following—"No person holding any office of profit or trust under the [illegible] without the consent of the Legislature, shall accept any present, emolument, office or title of any kind whatever, from any King, Prince or foreign [illegible]" which passed nem: contrad:

[1] [illegible] Journal, Geo: no.—Madison's note.

On the question to agree to the 1st part of the clause, namely

"To make laws for organizing arming & disciplining the Militia, and for governing such part of them as may be employed in the service of the U. S."

N. H. ay. Mas. ay. Ct. no. N. J. ay. Pa. ay. Del. ay. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. Madison moved to amend the next part of the clause so as to read "reserving to the States respectively, the appointment of the officers, *under the rank of General officers*"

Mr. Sherman considered this as absolutely inadmissible. He said that if the people should be so far asleep as to allow the most influential officers of the militia to be appointed by the Genl. Government, every man of discernment would rouse them by sounding the alarm to them.

Mr. Gerry. Let us at once destroy the State Govts. have an Executive for life or hereditary, and a proper Senate, and then there would be some consistency in giving full powers to the Genl. Govt. but as the States are not to be abolished, he wondered at the attempts that were made to give powers inconsistent with their existence. He warned the Convention agst. pushing the experiment too far. Some people will support a plan of vigorous Government at every risk. others of a more democratic cast will oppose it with equal determination, and a Civil war may be produced by the conflict.

Mr. Madison. As the greatest danger is that of

disunion of the States, it is necessary to guard agᵉ it by sufficient powers to the Common govᵗ and as the greatest danger to liberty is from large standing armies, it is best to prevent them by an effectual provision for a good Militia.

On the Question to agree to Mʳ Madison's motion

N. H. ay. Mas. no. Cᵗ no. N. J. no. Pᵃ no. Del. no. Mᵈ no. Vᵃ no. N. C. no. S. C. ay. Geo. ay.[1]

On the question to agree to the "reserving to the States the appointment of the officers." It was agreed to nem: contrad:

On the question on the clause "and the authority of training the Militia according to the discipline prescribed by the U. S."—

N. H. ay. Mas. ay. Cᵗ ay. N. J. ay. Pᵃ ay. Del. no. Mᵈ ay. Vᵃ no. N. C. ay. S. C. no. Geo. no.

On the question to agree to Art. VII. Sect. 7. as reported it passed nem: contrad:

Mʳ Pinkney urged the necessity of preserving foreign Ministers & other officers of the U. S. independent of external influence and moved to insert, after Art. VII Sect 7. the clause following—"No person holding any office of profit or trust under the U. S. shall without the consent of the Legislature, accept of any present, emolument, office or title of any kind whatever, from any King, Prince or foreign State which passed nem: contrad:

[1] In the printed Journal, Geo: no.—Madison's note.

Mr Rutlidge moved to amend Art: VIII to read as follows,

"This Constitution & the laws of the U. S. made in pursuance thereof, and all the Treaties made under the authority of the U. S. shall be the supreme law of the several States and of their citizens and inhabitants; and the Judges in the several States shall be bound thereby in their decisions, any thing in the Constitutions or laws of the several States, to the contrary notwithstanding."

which was agreed to, nem: contrad:

Art: IX being next for consideration,

Mr Govr Morris argued agst the appointment of officers by the Senate. He considered the body as too numerous for the purpose; as subject to cabal; and as devoid of responsibility. If Judges were to be tried by the Senate according to a late report of a Committee it was particularly wrong to let the Senate have the filling of vacancies which its own decrees were to create.

Mr Wilson was of the same opinion & for like reasons.

The art IX. being waved, and Art VII. Sect. 1. resumed,

Mr Govr Morris moved to strike the following words out of the 18 clause "enforce treaties" as being superfluous, since treaties were to be "laws" —which was agreed to nem: contrad:

Mr Govr Morris moved to alter 1st part. of 18. clause Sect. 1. art VII so as to read "to provide for calling forth the militia to execute the laws of the

Union, suppress insurrections and repel invasions" —which was agreed to nem: contrad:

On the question then to agree to the 18 clause of Sect. 1. Art: 7. as amended it passed in the affirmative nem: contrad

Mr C. Pinkney moved to add as an additional power to be vested in the Legislature of the U. S. "To negative all laws passed by the several States interfering in the opinion of the legislature with the general interests and harmony of the Union; "provided that two thirds of the members of each House assent to the same" This principle he observed had formerly been agreed to. He considered the precaution as essentially necessary. The objection drawn from the predominance of the large States had been removed by the equality established in the Senate.[1]

Mr Broome 2ded the proposition.

Mr Sherman thought it unnecessary; the laws of the General Government being supreme & paramount to the State laws according to the plan, as it now stands.

Mr Madison proposed that it should be committed. He had been from the beginning a friend to the prin-

[1] "Richmond Augt 22. 87.

"Dear Sir,

. . . . . .

"I have still some hope that I shall hear from you of ye reinstatement of ye *negative*—as it is certainly ye only means by which the several Legislatures can be restrained from disturbing ye order & harmony of ye whole, & ye governmt render'd properly *national*, & *one*. I should suppose yt some of its former opponents must by this time have seen ye necessity of advocating it, if they wish to support their own principles."

(James McClurg to Madison—Mad. MSS.)

ciple; but thought the modification might be made better.

Mr Mason wished to know how the power was to be exercised. Are all laws whatever to be brought up? Is no road nor bridge to be established without the Sanction of the General Legislature? Is this to sit constantly in order to receive & revise the State Laws?—He did not mean by these remarks to condemn the expedient, but he was apprehensive that great objections would lie agst it.

Mr Williamson thought it unnecessary, having been already decided, a revival of the question was a waste of time.

Mr Wilson considered this as the key-stone wanted to compleat the wide arch of Government we are raising. The power of self-defence had been urged as necessary for the State Governments. It was equally necessary for the General Government. The firmness of Judges is not of itself sufficient. Something further is requisite. It will be better to prevent the passage of an improper law, than to declare it void when passed.

Mr Rutlidge. If nothing else, this alone would damn and ought to damn the Constitution. Will any State ever agree to be bound hand & foot in this manner. It is worse than making mere corporations of them whose bye laws would not be subject to this shackle.

Mr Elseworth observed that the power contended for wd require either that all laws of the State Legislatures should previously to their taking effect be

transmitted to the Gen[l] Legislature, or be repealable by the Latter; or that the State Executives should be appointed by the Gen[l] Government, and have a controul over the State laws. If the last was meditated let it be declared.

M[r] Pinkney declared that he thought the State Executives ought to be so appointed with such a controul, & that it would be so provided if another Convention should take place.

M[r] Govern[r] Morris did not see the utility or practicability of the proposition of M[r] Pinkney, but wished it to be referred to the consideration of a Committee.

M[r] Langdon was in favor of the proposition. He considered it as resolvable into the question whether the extent of the National Constitution was to be judged of by the Gen[l] or the State Governments.

On the question for commitment, it passed in the negative.

N. H. ay. Mass[ts] no. Con[t] no. N. J. no. P[a] ay. Del. ay. M[d] ay. V[a] ay. N. C. no. S. C. no. Geo. no.

M[r] Pinkney then withdrew his proposition.

The 1st sect. of Art: VII being so amended as to read "The Legislature *shall* fulfil the engagements and discharge the debts of the U. S. & shall have the power to lay & collect taxes duties imposts & excises," was agreed to

M[r] Butler expressed his dissatisfaction lest it should compel payment as well to the Blood-suckers who had speculated on the distresses of others, as to

those who had fought & bled for their country. He would be ready he said to-morrow to vote for a discrimination between those classes of people, and gave notice that he should move for a reconsideration.

Art IX Sect. 1. being resumed, to wit "The Senate of the U. S. shall have power to make treaties, and to appoint Ambassadors, and Judges of the Supreme Court."

Mr Madison observed that the Senate represented the States alone, and that for this as well as other obvious reasons it was proper that the President should be an agent in Treaties.

Mr Govr Morris did not know that he should agree to refer the making of Treaties to the Senate at all, but for the present w^d^ move to add, as an amendment to the section after "Treaties"—"but no Treaty shall be binding on the U. S. which is not ratified by a law."

Mr Madison suggested the inconvenience of requiring a legal *ratification* of treaties of alliance for the purposes of war &c &c"

Mr Ghorum. Many other disadvantages must be experienced if treaties of peace & all negotiations are to be previously ratified—and if not previously, the Ministers would be at a loss how to proceed. What would be the case in G. Britain if the King were to proceed in this manner. American Ministers must go abroad not instructed by the same Authority (as will be the case with other Ministers) which is to ratify their proceedings.

Mr Govr Morris. As to treaties of alliance, they will oblige foreign powers to send their ministers here the very thing we should wish for. Such treaties could not be otherwise made, if his amendment sh^d^ succeed. In general he was not solicitious to multiply & facilitate Treaties. He wished none to be made with G. Britain, till she should be at war. Then a good bargain might be made with her. So with other foreign powers. The more difficulty in making treaties, the more value will be set on them.

Mr Wilson. In the most important Treaties, the King of G. Britain being obliged to resort to Parliament for the execution of them, is under the same fetters as the amendment of Mr Morris' will impose on the Senate. It was refused yesterday to permit even the Legisature to lay duties on exports. Under the clause without the amendment, the Senate alone can make a Treaty, requiring all the Rice of S. Carolina to be sent to some one particular port.

Mr Dickinson concurred in the amendment, as most safe and proper, tho' he was sensible it was unfavorable to the little States, wch would otherwise have an *equal* share in making Treaties.

Doc^r^ Johnson thought there was something of solecism in saying that the acts of a minister with plenipotentiary powers from one Body, should depend for ratification on another Body. The Example of the King of G. B. was not parallel. Full & compleat power was vested in him. If the Parliament should fail to provide the necessary means of execution, the Treaty would be violated.

Mr Ghorum in answer to Mr Govr Morris, said that negotiations on the spot were not to be desired by us, especially if the whole Legislature is to have any thing to do with Treaties. It will be generally influenced by two or three men, who will be corrupted by the Ambassadors here. In such a Government as ours, it is necessary to guard against the Government itself being seduced.

Mr Randolph observing that almost every Speaker had made objections to the clause as it stood, moved in order to a further consideration of the subject, that the motion of Mr Govr Morris should be postponed, and on this question It was lost the States being equally divided.

Mass^ts^ no. Con^t^ no. N. J. ay. Pen^a^ ay. Del. ay. M^d^ ay. V^a^ ay. N. C. no. S. C. no. Geo. no.

On Mr Govr Morris motion

Mass^ts^ no. Con^t^ no. N. J. no. P^a^ ay. Del. no. M^d^ no. V^a^ no. N. C. div^d^ S. C. no. Geo. no.

The several clauses of Sect: 1. Art IX, were then separately postponed after inserting "and other public ministers" next after "ambassadors."

Mr Madison hinted for consideration, whether a distinction might not be made between different sorts of Treaties—allowing the President & Senate to make Treaties eventual and of alliance for limited terms—and requiring the concurrence of the whole Legislature in other Treaties.

The 1st Sect Art IX. was finally referred nem: con: to the committee of Five, and the House then

Adjourned.

FRIDAY AUGUST 24. 1787. IN CONVENTION

Governour Livingston, from the Committee of Eleven, to whom were referred the two remaining clauses of the 4th Sect & the 5 & 6 Sect: of the 7th Art: delivered in the following Report:

"Strike out so much of the 4th Sect: as was referred to the Committee and insert—'The migration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1800, but a tax or duty may be imposed on such migration or importation at a rate not exceeding the average of the duties laid on imports.'"

"The 5 Sect: to remain as in the Report"

"The 6 Sect. to be stricken out"

Mr Butler, according to notice, moved that clause 1st sect. 1. of art VII, as to the discharge of debts, be reconsidered tomorrow. He dwelt on the division of opinion concerning the domestic debts, and the different pretensions of the different classes of holders. Genl Pinkney 2ded him.

Mr Randolph wished for a reconsideration in order to better the expression, and to provide for the case of the State debts as is done by Congress.

On the question for reconsidering

N. H. no. Mass: ay. Cont ay. N. J. ay. Pena absent. Del. ay. Md no. Va ay. N. C. absent. S. C. ay. Geo. ay.—and tomorrow assigned for the reconsideration.

Sect: 2 & 3 of art: IX being taken up,

Mr Rutlidge said this provision for deciding con-

troversies between the States was necessary under the Confederation, but will be rendered unnecessary by the National Judiciary now to be established, and moved to strike it out.

Doc^{r} Johnson 2^{ded} the motion

Mr Sherman concurred: so did Mr Dayton.

Mr Williamson was for postponing instead of striking out, in order to consider whether this might not be a good provision, in cases where the Judiciary were interested or too closely connected with the parties.

Mr Ghorum had doubts as to striking out. The Judges might be connected with the States being parties—He was inclined to think the mode proposed in the clause would be more satisfactory than to refer such cases to the Judiciary.

On the Question for postponing the 2^{d} & 3^{d} Section it passed in the negative

N. H. ay. Mass^{ts} no. Con^{t} no. N. J. no. Pen^{a} abs^{t} Del. no. M^{d} no. V^{a} no. N. C. ay. S. C. no. Geo. ay.

Mr Wilson urged the striking out, the Judiciary being a better provision.

On Question for striking out 2 & 3 Sections Art: IX

N. H. ay. Mass. ay. C^{t} ay. N. J. ay. P^{a} abs^{t} Del. ay. M^{d} ay. V^{a} ay. N. C. no. S. C. ay. Geo. no.

Art X. Sect. 1. "The Executive power of the U. S. shall be vested in a single person. His stile shall be "The President of the U. S. of America" and his title shall be "His Excellency." He shall be

elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

On the question for vesting the power in a *single person*—It was agreed to nem: con: So also on the *stile* and *title*.

Mr. Rutlidge moved to insert "joint" before the word "ballot," as the most convenient mode of electing.

Mr. Sherman objected to it as depriving the *States* represented in the *Senate* of the negative intended them in that house.

Mr. Ghorum said it was wrong to be considering at every turn whom the Senate would represent. The public good was the true object to be kept in view. Great delay and confusion would ensue if the two Houses shd. vote separately, each having a negative on the choice of the other.

Mr. Dayton. It might be well for those not to consider how the Senate was constituted, whose interest it was to keep it out of sight.—If the amendment should be agreed to, a *joint* ballot would in fact give the appointment to one House. He could never agree to the clause with such an amendment. There could be no doubt of the two Houses separately concurring in the same person for President. The importance & necessity of the case would ensure a concurrence.

Mr. Carrol moved to strike out "by the Legislature" and insert "by the people." Mr. Wilson 2ded. him & on the question

N. H. no. Mass^{ts} no. Con^{t} no. N. J. no. P^{a} ay. Del. ay. M^{d} no. V^{a} no. N. C. no. S. C. no. Geo. no.

Mr Brearly was opposed to the motion for inserting the word "joint." The argument that the small States should not put their hands into the pockets of the large ones did not apply in this case.

Mr Wilson urged the reasonableness of giving the larger States a larger share of the appointment, and the danger of delay from a disagreement of the two Houses. He remarked also that the Senate had peculiar powers balancing the advantage given by a joint ballot in this case to the other branch of the Legislature.

Mr Langdon. This general officer ought to be elected by the joint & general voice. In N. Hampshire the mode of separate votes by the two Houses was productive of great difficulties. The negative of the Senate would hurt the feelings of the man elected by the votes of the other branch. He was for inserting "joint" tho' unfavorable to N. Hampshire as a small State.

Mr Wilson remarked that as the President of the Senate was to be the President of the U. S. that Body in cases of vacancy might have an interest in throwing dilatory obstacles in the way, if its separate concurrence should be required.

Mr Madison. If the amendment be agreed to the rule of voting will give to the largest State, compared with the smallest, an influence as 4 to 1 only, altho the population is as 10 to 1. This surely cannot

be unreasonable as the President is to act for the *people* not for the *States*. The President of the *Senate* also is to be occasionally President of the U. S. and by his negative alone can make ¾ of the other branch necessary to the passage of a law. This is another advantage enjoyed by the Senate.

On the question for inserting "joint," it passed in the affirmative

N. H. ay. Mass^{ts} ay. C^{t} no. N. J. no. P^{a} ay. Del. ay. M^{d} no. V^{a} ay. N. C. ay. S. C. ay. Geo. no.

Mr Dayton then moved to insert, after the word "Legislatures" the words "each State having one vote." Mr Brearly 2^{ded} him, and on the question it passed in the negative

N. H. no. Mas. no. C^{t} ay. N. J. ay. P^{a} no. Del. ay. M^{d} ay. V^{a} no. N. C. no. S. C. no. Geo. ay.

Mr Pinkney moved to insert after the word "Legislature" the words "to which election a majority of the votes of the members present shall be required" & on this question, it passed in the affirmative

N. H. ay. Mass. ay. C^{t} ay. N. J. no. P^{a} ay. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

Mr Read moved "that in case the numbers for the two highest in votes should be equal, then the President of the Senate shall have an additional casting vote," which was disagreed to by a general negative.

Mr Govr Morris opposed the election of the Presi-

dent by the Legislature. He dwelt on the danger of rendering the Executive uninterested in maintaining the rights of his Station, as leading to Legislative tyranny. If the Legislature have the Executive dependent on them, they can perpetuate & support their usurpations by the influence of tax-gatherers & other officers, by fleets armies &c. Cabal & corruption are attached to that mode of election: so also is ineligibility a second time. Hence the Executive is interested in Courting popularity in the Legislature by sacrificing his Executive Rights; & then he can go into that Body, after the expiration of his Executive office, and enjoy there the fruits of his policy. To these considerations he added that rivals would be continually intriguing to oust the President from his place. To guard against all these evils he moved that the President "shall be chosen by Electors to be chosen by the People of the several States" Mr. Carrol 2ded him & on the question it passed in the negative N. H. no. Mass. no. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. no. Va. ay. N. C. no. S. C. no. Geo. no.

Mr. Dayton moved to postpone the consideration of the two last clauses of Sect. 1. art X. which was disagreed to without a count of the States.

Mr. Broome moved to refer the two clauses to a Committee of a member from each State, & on the question, it failed the States being equally divided N. H. no. Mas. no. Ct. divd. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. no. S. C. no. Geo. no.

On the question taken on the first part of Mr. Govr.

Morris's motion to wit "shall be chosen by electors" as an abstract question, it failed the States being equally divided, N. H. no. Mas. abs^{t} C^{t} div^{d} N. Jersey ay P^{a} ay. Del. ay. M^{d} div^{d} V^{a} ay. N. C. no. S. C. no. Geo. no.

The consideration of the remaining clauses of Sect 1. art X. was then postponed till tomorrow at the instance of the Deputies of New Jersey.

Sect. 2. Art: X being taken up, the word information was transposed & inserted after "Legislature"

On motion of Mr Govr Morris, "he may" was struck out, & "and" inserted before "recommend" in the clause 2^{d} sect 2^{d} art: X. in order to make it the *duty* of the President to recommend, & thence prevent umbrage or cavil at his doing it.

Mr Sherman objected to the sentence "and shall appoint officers in all cases not otherwise provided for by this Constitution." He admitted it to be proper that many officers in the Executive Department should be so appointed—but contended that many ought not, as general officers in the army in time of peace &c. Herein lay the corruption in G. Britain. If the Executive can model the army, he may set up an absolute Government; taking advantage of the close of a war and an army commanded by his creatures. James 2^{d} was not obeyed by his officers because they had been appointed by his predecessors not by himself. He moved to insert "or by law" after the word "Constitution."

On motion of Mr Madison "officers" was struck out and "to offices" inserted, in order to obviate doubts

that he might appoint officers without a previous creation of the offices by the Legislature.

On the question for inserting "or by law as moved by Mr Sherman N. H. no. Mas. no. Ct ay. N. J. no. Pen[a] no. Del. no. Md no. Va no. N. C. absent. S. C. no. Geo. no.

Mr Dickinson moved to strike out the words "and shall appoint to offices in all cases not otherwise provided for by this Constitution" and insert—"and shall appoint to all offices established by this Constitution, except in cases herein otherwise provided for, and to all offices which may hereafter be created by law."

Mr Randolph observed that the power of appointments was a formidable one both in the Executive & Legislative hands—and suggested whether the Legislature should not be left at liberty to refer appointments in some cases, to some State authority.

Mr Dickenson's motion, it passed in the affirmative N. H. no. Mas. no. Ct ay. N. J. ay. Pa ay. Del. no. Md ay. Va ay. N. C. abst S. C. no. Geo. ay.

Mr Dickinson then moved to annex to his last amendment "except where by law the appointment shall be vested in the Legislatures or Executives of the several States." Mr Randolph 2[ded] the motion.

Mr Wilson. If this be agreed to it will soon be a standing instruction from the State Legislatures to pass no law creating offices, unless the appts be referred to them.

Mr Sherman objected to "Legislatures" in the

motion, which was struck out by consent of the movers.

Mr. Govr. Morris. This would be putting it in the power of the States to say, "You shall be viceroys but we will be viceroys over you"—

The motion was negatived without a Count of the States—

Ordered unanimously that the order respecting the adjournment at 4 OClock be repealed, & that in future the House assemble at 10 OC. & adjourn at 3 OC.

Adjourned

SATURDAY AUGUST 25. 1787. IN CONVENTION

The 1st. clause of 1 Sect. of art: VII being reconsidered

Col. Mason objected to the term "*shall*"—fullfil the engagements & discharge the debts &c as too strong. It may be impossible to comply with it. The Creditors should be kept in the same plight. They will in one respect be necessarily and properly in a better. The Government will be more able to pay them. The use of the term *shall* will beget speculations and increase the pestilent practice of stock-jobbing. There was a great distinction between original creditors & those who purchased fraudulently of the ignorant and distressed. He did not mean to include those who have bought Stock in open market. He was sensible of the difficulty of drawing the line in this case, but he did not

wish to preclude the attempt. Even fair purchasers at 4. 5. 6. 8 for 1 did not stand on the same footing with the first Holders, supposing them not to be blameable. The interest they receive even in paper, is equal to their purchase money. What he particularly wished was to leave the door open for buying up the securities, which he thought would be precluded by the term "shall" as requiring *nominal payment*, & which was not inconsistent with his ideas of public faith. He was afraid also the word "*shall*," might extend to all the old continental paper.

Mr Langdon wished to do no more than leave the Creditors in statu quo.

Mr Gerry said that for himself he had no interest in the question being not possessed of more of the securities than would, by the interest, pay his taxes. He would observe however that as the public had received the value of the literal amount, they ought to pay that value to some body. The frauds on *the soldiers* ought to have been foreseen. these poor & ignorant people could not but part with their securities. There are other creditors who will part with any thing rather than be cheated of the capital of their advances. The interest of the States he observed was different on this point, some having more, others less than their proportion of the paper. Hence the idea of a scale for reducing its value had arisen. If the public faith would admit, of which he was not clear, he would not object to a revision of the debt so far as to compel restitution to the ignorant & distressed, who have been defrauded. As to

stock-jobbers he saw no reason for the censures thrown on them. They keep up the value of the paper. Without them there would be no market.

Mr. Butler said he meant neither to increase nor diminish the security of the Creditors.

Mr. Randolph moved to postpone the clause in favor of the following "All debts contracted & engagements entered into, by or under the authority of Congs. shall be as valid agst. the U. States under this constitution as under the Confederation."

Doct. Johnson. The debts are debts of the U. S. of the great Body of America. Changing the Government cannot change the obligation of the U. S. which devolves of course on the new Government. Nothing was in his opinion necessary to be said. If any thing, it should be a mere declaration as moved by Mr. Randolph.

Mr. Govr. Morris, said he never had become a public Creditor that he might urge with more propriety the compliance with public faith. He had always done so and always would, and preferr'd the term "*shall*" as the most explicit. As to *buying up* the debt, the term "*shall*" was not inconsistent with it, if provision be first made for paying the interest: if not, such an expedient was a mere evasion. He was content to say nothing as the New Government would be bound of course, but would prefer the clause with the term "*shall,*" because it would create many friends to the plan.

On Mr. Randolph's Motion

N. H. ay. Mas. ay. Ct. ay. N. J. ay. Pa. no.

Del. ay. Mary^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

Mr Sherman thought it necessary to connect with the clause for laying taxes duties &c an express provision for the object of the old debts &c—and moved to add to the 1st clause of 1st sect. art VII "for the payment of said debts and for the defraying the expences that shall be incurred for the common defence and general welfare."

The proposition, as being unnecessary was disagreed to, Connecticut alone, being in the affirmative.

The Report of the Committee of eleven (see friday the 24th instant) being taken up,

Genl Pinkney moved to strike out the words, "the year eighteen hundred" as the year limiting the importation of slaves, and to insert the words "the year eighteen hundred and eight"

Mr Ghorum 2^{ded} the motion

Mr Madison. Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonourable to the National character than to say nothing about it in the Constitution.

On the motion; which passed in the affirmative, N. H. ay. Mas. ay. C^{t} ay. N. J. no. P^{a} no. Del. no. M^{d} ay. V^{a} no. N. C. ay. S. C. ay. Geo. ay.

Mr Govr Morris was for making the clause read at once, "the importation of slaves into N. Carolina, S. Carolina & Georgia shall not be prohibited &c." This he said would be most fair and would avoid the

ambiguity by which, under the power with regard to naturalization, the liberty reserved to the States might be defeated. He wished it to be known also that this part of the Constitution was a compliance with those States. If the change of language however should be objected to by the members from those States, he should not urge it.

Col: Mason was not against using the term "slaves" but ag^st^ naming N. C. S. C. & Georgia, lest it should give offence to the people of those States.

Mr Sherman liked a description better than the terms proposed, which had been declined by the old Cong^s^ & were not pleasing to some people. Mr Clymer concurred with Mr Sherman

Mr Williamson said that both in opinion & practice he was against slavery; but thought it more in favor of humanity, from a view of all circumstances, to let in S. C & Georgia on those terms, than to exclude them from the Union.

Mr Govr Morris withdrew his motion.

Mr Dickenson wished the clause to be confined to the States which had not themselves prohibited the importation of slaves, and for that purpose moved to amend the clause so as to read "The importation of slaves into such of the States as shall permit the same shall not be prohibited by the Legislature of the U. S. until the year 1808 "—which was disagreed to nem: con: [1]

The first part of the report was then agreed to,

[1] In the printed Journals, Cont Virg^a^ & Georgia voted in the affirmative.—Madison's note.

amended as follows. "The migration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1808." N. H. Mas. Con. Mᵈ. N. C. S. C. Geo: ay N. J. Pᵃ Del. Virgᵃ no

Mʳ Baldwin in order to restrain & more explicitly define "the average duty" moved to strike out of the 2ᵈ part the words "average of the duties laid on imports" and insert "common impost on articles not enumerated" which was agreed to nem: cont:

Mʳ Sherman was agᵃˢᵗ this 2ᵈ part, as acknowledging men to be property, by taxing them as such under the character of slaves.

Mʳ King & Mʳ Langdon considered this as the price of the 1ˢᵗ part.

Genˡ Pinkney admitted that it was so.

Col: Mason. Not to tax, will be equivalent to a bounty on the importation of slaves.

Mʳ Ghorum thought that Mʳ Sherman should consider the duty, not as implying that slaves are property, but as a discouragement to the importation of them.

Mʳ Govʳ Morris remarked that as the clause now stands it implies that the Legislature may tax freemen imported.

Mʳ Sherman in answer to Mʳ Ghorum observed that the smallness of the duty shewed revenue to be the object, not the discouragement of the importation.

Mʳ Madison thought it wrong to admit in the

Constitution the idea that there could be property in men. The reason of duties did not hold, as slaves are not like merchandize, consumed, &c

Col. Mason (in answr to Govr Morris) the provision as it stands was necessary for the case of convicts in order to prevent the introduction of them.

It was finally agreed nem. contrad: to make the clause read "but a tax or duty may be imposed on such importation not exceeding ten dollars for each person," and then the 2d part as amended was agreed to.

Sect 5. art. VII was agreed to nem: con: as reported.

Sect. 6. art. VII. in the Report, was postponed.

On motion of Mr Madison 2ded by Mr Govr Morris Article VIII was reconsidered and after the words "all treaties made," were inserted nem: con: the words "or which shall be made." This insertion was meant to obviate all doubt concerning the force of treaties preexisting, by making the words "all treaties made" to refer to them, as the words inserted would refer to future treaties.

Mr Carrol and Mr L. Martin expressed their apprehensions, and the probable apprehensions of their constituents, that under the power of regulating trade the General Legislature, might favor the ports of particular States, by requiring vessels destined to or from other States to enter & clear thereat, as vessels belonging or bound to Baltimore, to enter & clear at Norfolk &c. They moved the following proposition

"The Legislature of the U. S. shall not oblige vessels belonging to citizens thereof, or to foreigners, to enter or pay duties or imposts in any other State than in that to which they may be bound, or to clear out in any other than the State in which their cargoes may be laden on board; nor shall any privilege or immunity be granted to any vessel on entering or clearing out, or paying duties or imposts in one State in preference to another"

Mr. Ghorum thought such a precaution unnecessary; & that the revenue might be defeated, if vessels could run up long rivers, through the jurisdiction of different States without being required to enter, with the opportunity of landing & selling their cargoes by the way.

Mr. McHenry & Genl. Pinkney made the following propositions

"Should it be judged expedient by the Legislature of the U. S. that one or more port for collecting duties or imposts other than those ports of entrance & clearance already established by the respective States, should be established, the Legislature of the U. S. shall signify the same to the Executives of the respective States, ascertaining the number of such ports judged necessary; to be laid by the said Executives before the Legislatures of the States at their next session; and the Legislature of the U. S. shall not have the power of fixing or establishing the particular ports for collecting duties or imposts in any State, except the Legislature of such State shall neglect to fix and establish the same during their first session to be

held after such notification by the Legislature of the U. S. to the Executive of such State"

"All duties imposts & excises, prohibitions or restraints laid or made by the Legislature of the U. S. shall be uniform & equal throughout the U. S."

These several propositions were referred nem: con: to a committee composed of a member from each State. The committee appointed by ballot were Mr. Langdon, Mr. Ghorum, Mr. Sherman, Mr. Dayton, Mr. Fitzimmons, Mr. Read, Mr. Carrol, Mr. Mason, Mr. Williamson, Mr. Butler, Mr. Few.

On the question now taken on Mr. Dickinson's motion of yesterday, allowing appointments to offices, to be referred by the Genl. Legislature to the Executives of the several States as a further amendment to sect. 2. art. X, the votes were N. H. no Mas. no. Ct. ay. Pa. no. Del. no. Md. divided. Va. ay. N. C. no. S. C. no. Geo. ay.

In amendment of the same section, "other public Ministers" were inserted after "ambassadors."

Mr. Govr. Morris moved to strike out of the section —"and may correspond with the supreme Executives of the several States" as unnecessary and implying that he could not correspond with others. Mr. Broome 2ded him.

On the question

N. H. ay. Mas. ay. Ct. ay. Pa. ay. Del. ay. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. ay.

"Shall receive ambassadors & other public Ministers," agreed to, nem. con.

Mr. Sherman moved to amend the "power to grant

reprieves & pardon" so as to read "to grant reprieves until the ensuing session of the Senate, and pardons with consent of the Senate."

On the question

N. H. no. Mas. no. Ct. ay. Pa. no. Md. no. Va. no. N. C. no. S. C. no. Geo. no.

"except in cases of impeachment" inserted nem. con: after "pardon"

On the question to agree to —"but his pardon shall not be pleadable in bar"

N. H. ay. Mas. no. Ct. no. Pa. no. Del. no. Md. ay. Va. no. N. C. ay. S. C. ay. Geo. no.

Adjourned

Monday Augst 27th 1787. In Convention

Art X. Sect 2. being resumed,

Mr. L. Martin moved to insert the words "after conviction" after the words "reprieves and pardons."

Mr. Wilson objected that pardon before conviction might be necessary in order to obtain the testimony of accomplices. He stated the case of forgeries in which this might particularly happen.—Mr. L. Martin withdrew his motion.

Mr. Sherman moved to amend the clause giving the Executive the command of the Militia, so as to read "and of the Militia of the several States, *when called into the actual service of the U. S.*" and on the Question N. H. ay. Mas. abst. Ct. ay. N. J. abst.

P^{a}. ay. Del. no. M^{d}. ay. V^{a}. ay. N. C. abs^{t}. S. C. no. Geo. ay.

The clause for removing the President on impeachment by the House of Rep^{s}. and conviction in the supreme Court, of Treason, Bribery or corruption, was postponed nem: con: at the instance of M^{r}. Govr. Morris, who thought the Tribunal an improper one, particularly, if the first Judge was to be of the privy Council.

M^{r}. Govr. Morris objected also to the President of the Senate being provisional successor to the President, and suggested a designation of the Chief Justice.

M^{r}. Madison added as a ground of objection that the Senate might retard the appointment of a President in order to carry points whilst the revisionary power was in the President of their own body, but suggested that the Executive powers during a vacancy, be administered by the persons composing the Council to the President.

M^{r}. Williamson suggested that the Legislature ought to have power to provide for occasional successors, & moved that the last clause (of 2 sect. X art:) relating to a provisional successor to the President, be postponed.

M^{r}. Dickinson 2^{ded}. the postponement, remarking that it was too vague. What is the extent of the term "disability" and who is to be the judge of it?

The postponement was agreed to nem: con:

Col: Mason & M^{r}. Madison moved to add to the oath to be taken by the supreme Executive "and

will to the best of my judgment and power preserve protect and defend the Constitution of the U. S."

Mr Wilson thought the general provision for oaths of office, in a subsequent place, rendered the amendment unnecessary.—

On the question

N. H. ay. Mas. abs^t^ C^t^ ay. P^a^ ay. Del. no. M^d^ ay. V^a^ ay. N. C. abs^t^ S. C. ay. Geo. ay.

Art: XI. being taken up.

Doc^r^ Johnson suggested that the judicial power ought to extend to equity as well as law—and moved to insert the words, "both in law and equity" after the words "U. S" in the 1st line of sect 1.

Mr Read objected to vesting these powers in the same Court.

On the question

N. H. ay. Mas. absent C^t^ ay. N. J. abs^t^ P. ay. Del. no. M^d^ no. Virg^a^ ay. N. C. abs^t^ S. C. ay. Geo. ay.

On the question to agree to Sect. 1. art. XI. as amended

N. H. ay. Mas. abs^t^ C^t^ ay. P^a^ ay. N. J. abs^t^ Del. no. M^d^ no. V^a^ ay. N. C. abs^t^ S. C. ay. Geo. ay.

Mr Dickinson moved as an amendment to sect. 2. art XI after the words "good behavior" the words "provided that they may be removed by the Executive on the application by the Senate and House of Representatives."

Mr Gerry 2^ded^ the motion

Mr Govr Morris thought it a contradiction in

terms to say that the Judges should hold their offices during good behavior, and yet be removeable without a trial. Besides it was fundamentally wrong to subject Judges to so arbitrary an authority.

Mr Sherman saw no contradiction or impropriety if this were made a part of the Constitutional regulation of the Judiciary establishment. He observed that a like provision was contained in the British Statutes.

Mr Rutlidge. If the Supreme Court is to judge between the U. S. and particular States, this alone is an insuperable objection to the motion.

Mr Wilson considered such a provision in the British Government as less dangerous than here, the House of Lords & House of Commons being less likely to concur on the same occasions. Chief Justice Holt, he remarked, had *successively* offended by his independent conduct, both houses of Parliament. Had this happened at the same time, he would have been ousted. The Judges would be in a bad situation if made to depend on any gust of faction which might prevail in the two branches of our Govt

Mr Randolph opposed the motion as weakening too much the independence of the Judges.

Mr Dickinson was not apprehensive that the Legislature composed of different branches constructed on such different principles, would improperly unite for the purpose of displacing a Judge.

On the question for agreeing to Mr Dickinson's Motion

N. H. no. Mas. abs^{t} C^{t} ay. N. J. abs^{t} P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. abs^{t} S. C. no. Geo. no.

Mr Madison and M^{r} McHenry moved to reinstate the words "increased or" before the word "diminished" in 2^{d} sect. art XI.

Mr Govr Morris opposed it for reasons urged by him on a former occasion—

Col: Mason contended strenuously for the motion. There was no weight he said in the argument drawn from changes in the value of the metals, because this might be provided for by an increase of salaries so made as not to affect persons in office, and this was the only argument on which much stress seemed to have been laid.

Genl Pinkney. The importance of the Judiciary will require men of the first talents: large salaries will therefore be necessary, larger than the U. S. can allow in the first instance. He was not satisfied with the expedient mentioned by Col: Mason. He did not think it would have a good effect or a good appearance, for new Judges to come in with higher salaries than the old ones.

Mr Govr Morris said the expedient might be evaded & therefore amounted to nothing. Judges might resign, & then be re-appointed to increased salaries.

On the question

N. H. no. C^{t} no. P^{a} no. Del. no. M^{d} div^{d} V^{a} ay. S. C. no. Geo. abs^{t} also Mas^{ts} & N. J. & N. C.

Mr Randolph & Mr Madison then moved to add the following words to art XI. sect. 2. "nor increased by any Act of the Legislature which shall operate before the expiration of three years after the passing thereof"

On the question

N. H. no. Ct no. Pa no. Del. no. Md ay. Va ay. S. C. no. Geo. abst also Mas. N. J. & N. C.

Sect. 3. art. XI. being taken up, the following cause was postponed viz, "to the trial of impeachments of officers of the U. S." by which the jurisdiction of the supreme Court was extended to such cases.

Mr Madison & Mr Govr Morris moved to insert after the word "controversies" the words "to which the U. S. shall be a party," which was agreed to nem: con:

Docr Johnson moved to insert the words "this Constitution and the" before the word "laws"

Mr Madison doubted whether it was not going too far to extend the jurisdiction of the Court generally to cases arising under the Constitution & whether it ought not to be limited to cases of a Judiciary Nature. The right of expounding the Constitution in cases not of this nature ought not to be given to that Department.

The motion of Docr Johnson was agreed to nem: con: it being generally supposed that the jurisdiction given was constructively limited to cases of a Judiciary nature.

On motion of Mr Rutlidge the words "passed by

the Legislature" were struck out, and after the words "U. S" were inserted nem. con: the words "and treaties made or which shall be made under their authority" conformably to a preceding amendment in another place.

The clause "in cases of impeachment," was postponed.

Mr. Govr. Morris wished to know what was meant by the words "In all the cases before-mentioned it (jurisdiction) shall be appellate with such exceptions &c," whether it extended to matters of fact as well as law—and to cases of common law as well as civil law.

Mr. Wilson. The Committee he believed meant facts as well as law & Common as well as Civil law. The jurisdiction of the federal Court of Appeals had he said been so construed.

Mr. Dickinson moved to add after the word "appellate" the words "both as to law & fact which was agreed to nem: con:

Mr. Madison & Mr. Govr. Morris moved to strike out the beginning of the 3d sect. "The jurisdiction of the supreme Court" & to insert the words "the Judicial power" which was agreed to nem: con:

The following motion was disagreed to, to wit to insert "In all the other cases beforementioned the Judicial power shall be exercised in such manner as the Legislature shall direct" Del. Virga ay N. H Con. P. M. S. C. G. no

On a question for striking out the last sentence of of the sect. 3. "The Legislature may assign &c."

N. H. ay. Ct ay. Pa ay. Del. ay. Md ay. Va ay. S. C. ay. Geo. ay.

Mr Sherman moved to insert after the words "between Citizens of different States" the words, "between Citizens of the same State claiming lands under grants of different States"—according to the provision in the 9th Art: of the Confederation—which was agreed to nem: con:

Adjourned

TUESDAY AUGUST 28 1787. IN CONVENTION

Mr Sherman from the Committee to whom were referred several propositions on the 25th instant, made the following report:—

That there be inserted after the 4 clause of 7th section

"Nor shall any regulation of commerce or revenue give preference to the ports of one State over those of another, or oblige vessels bound to or from any State to enter clear or pay duties in another and all tonnage, duties, imposts & excises laid by the Legislature shall be uniform throughout the U. S."

Art XI Sect. 3, It was moved to strike out the words "it shall be appellate" to insert the words "the supreme Court shall have appellate jurisdiction,"—in order to prevent uncertainty whether "it" referred to the *supreme Court*, or to the *Judicial power*.

On the question

N. H ay. Mas. ay. Ct. ay. N. J. abst. Pa. ay. Del. ay. Md. no. Va. ay. N C ay. S. C ay. Geo. ay.

Sect. 4. was so amended nem. con: as to read "The trial of all crimes (except in cases of impeachment) shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, then the trial shall be at such place or places as the Legislature may direct" The object of this amendment was to provide for trial by jury of offences committed out of any State.

Mr. Pinkney urged the propriety of securing the benefit of the Habeas corpus in the most ample manner, moved "that it should not be suspended but on the most urgent occasions, & then only for a limited time not exceeding twelve months"

Mr. Rutlidge was for declaring the Habeas Corpus inviolable. He did not conceive that a suspension could ever be necessary at the same time through all the States.

Mr. Govr. Morris moved that "The privilege of the writ of Habeas Corpus shall not be suspended; unless where in cases of Rebellion or invasion the public safety may require it."

Mr. Wilson doubted whether in any case a suspension could be necessary, as the discretion now exists with Judges, in most important cases to keep in Gaol or admit to Bail.

The first part of Mr. Govr. Morris' motion, to the word "unless" was agreed to nem: con:—on the remaining part;

N. H. ay. Mas ay. Ct ay. Pa ay. Del. ay. Md ay. Va ay. N. C. no. S. C. no. Geo. no.

Sec. 5. of art: XI. was agreed to *nem:* con.[1]

Art: XII being taken up.

Mr Wilson & Mr Sherman moved to insert after the words "coin money" the words "nor emit bills of credit, nor make any thing but gold & silver coin a tender in payment of debts" making these prohibitions absolute, instead of making the measures allowable (as in the XIII art:) *with the consent of the Legislature of the U. S.*

Mr Ghorum thought the purpose would be as well secured by the provisions of art: XIII which makes the consent of the Genl Legislature necessary, and that in that mode no opposition would be excited; whereas an absolute prohibition of paper money would rouse the most desperate opposition from its partizans.

Mr Sherman thought this a favorable crisis for crushing paper money. If the consent of the Legislature could authorize emissions of it, the friends of paper money would make every exertion to get into the Legislature in order to license it.

The question being divided; on the 1st part— "nor emit bills of credit" N. H. ay. Mas. ay. Ct ay. Pa ay. Del. ay. Md div. Va no. N. C. ay. S. C. ay. Geo. ay.

The remaining part of Mr Wilson's & Sherman's motion was agreed to nem: con:

[1] The vote on this section as stated in the printed Journal is not unanimous: the statement here is probably the right one.—Madison's note.

Mr King moved to add, in the words used in the Ordinance of Congr establishing new States, a prohibition on the States to interfere in private contracts.

Mr Govr Morris. This would be going too far. There are a thousand laws, relating to bringing actions—limitations, of actions & which affect contracts. The Judicial power of the U. S. will be a protection in cases within their jurisdiction; and within the State itself a majority must rule, whatever may be the mischief done among themselves.

Mr Sherman. Why then prohibit bills of credit?

Mr Wilson was in favor of Mr King's motion.

Mr Madison admitted that inconveniences might arise from such a prohibition but thought on the whole it would be overbalanced by the utility of it. He conceived however that a negative on the State laws could alone secure the effect. Evasions might and would be devised by the ingenuity of the Legislatures.

Col: Mason. This is carrying the restraint too far. Cases will happen that cannot be foreseen, where some kind of interference will be proper & essential. He mentioned the case of limiting the period for bringing actions on open account—that of bonds after a certain lapse of time—asking whether it was proper to tie the hands of the States from making provision in such cases?

Mr Wilson. The answer to these objections is that retrospective interferences only are to be prohibited.

Mr Madison. Is not that already done by the

prohibition of ex post facto laws, which will oblige the Judges to declare such interferences null & void.

Mr Rutlidge moved instead of Mr King's Motion to insert —"nor pass bills of attainder nor retrospective [1] laws" on which motion N. H. ay. C^t^ no. N. J. ay. P^a^ ay. Del. ay. M^d^ no. Virg^a^ no. N. C. ay. S. C. ay. Geo. ay.

Mr Madison moved to insert after the word "reprisal" (art. XII) the words "nor lay embargoes." He urged that such acts by the States would be unnecessary—impolitic—and unjust.

Mr Sherman thought the States ought to retain this power in order to prevent suffering & injury to their poor.

Col: Mason thought the amendment would be not only improper but dangerous, as the Genl Legislature would not sit constantly and therefore could not interpose at the necessary moments. He enforced his objection by appealing to the necessity of sudden embargoes during the war, to prevent exports, particularly in the case of a blockade.

Mr Govr Morris considered the provision as unnecessary; the power of regulating trade between State & State already vested in the Genl Legislature, being sufficient.

On the question

N. H. no. Mas. ay. C^t^ no. N. J. no. P^a^ no. Del. ay. M^d^ no. V^a^ no. N. C. no. S. C. ay. Geo. no.

Mr Madison moved that the words "nor lay im-

[1] In the printed Journal—ex post facto.—Madison's note.

posts or duties on imports" be transferred from art: XIII where the consent of the Gen[l] Legislature may license the act—into art: XII which will make the prohibition of the States absolute. He observed that as the States interested in this power by which they could tax the imports of their neighbors passing thro' their markets, were a majority, they could give the consent of the Legislature, to the injury of N. Jersey, N. Carolina &c.

M[r] Williamson 2[ded] the motion.

M[r] Sherman thought the power might safely be left to the Legislature of the U. States.

Col: Mason observed that particular States might wish to encourage by impost duties certain manufactures for which they enjoyed natural advantages, as Virginia, the manufacture of Hemp &c.

M[r] Madison. The encouragement of Manufactures in that mode requires duties not only on imports directly from foreign Countries, but from the other States in the Union, which would revive all the mischiefs experienced from the want of a Gen[l] Government over commerce.[1]

On the question

N. H. ay. Mas. no. C[t] no. N. J. ay. P[a] no. Del[a] ay. M[d] no. V[a] no. N. C. ay. S. C. no. Geo. no.

[1] August 28, 1787, New York, Hamilton wrote to King: "I wrote to you some days since [August 20] to request you to inform me when there was a prospect of your finishing, as I intended to be with you, for certain reasons, before the conclusion.

"It is whispered here that some late changes in your scheme have taken place which give it a higher tone. Is this the case?"—King's *Life and Correspondence of Rufus King I*, 258.

Art: XII as amended agreed to nem: con:

Art: XIII being taken up. Mr. King moved to insert after the word "imports" the words "or exports," so as to prohibit the States from taxing either, & on this question it passed in the affirmative.

N. H. ay. Mas. ay. Ct. no. N. J. ay. P. ay. Del. ay. Md. no. Va. no. N. C. ay. S. C. no. Geo. no.

Mr. Sherman moved to add after the word "exports"—the words "nor with such consent but for the use of the U. S."—so as to carry the proceeds of all State duties on imports & exports, into the common Treasury.

Mr. Madison liked the motion as preventing all State imposts—but lamented the complexity we were giving to the commercial system.

Mr. Govr. Morris thought the regulation necessary to prevent the Atlantic States from endeavoring to tax the Western States—& promote their interest by opposing the navigation of the Mississippi which would drive the Western people into the arms of G. Britain.

Mr. Clymer thought the encouragement of the Western Country was suicide on the old States. If the States have such different interests that they cannot be left to regulate their own manufactures without encountering the interests of other States, it is a proof that they are not fit to compose one nation.

Mr. King was afraid that the regulation moved by

Mr Sherman would too much interfere with the policy of States respecting their manufactures, which may be necessary. Revenue he reminded the House was the object of the general Legislature.

On Mr Sherman's motion

N. H. ay. Mas. no. C^t^ ay. N. J. ay. P^a^ ay. Del. ay. M^d^ no. V^a^ ay. N. C. ay. S. C. ay. Geo. ay

Art XIII was then agreed to as amended.

Art. XIV was taken up.

Genl Pinkney was not satisfied with it. He seemed to wish some provision should be included in favor of property in slaves.

On the question on Art: XIV.

N. H. ay. Mas. ay. C^t^ ay. N. J. ay. P^a^ ay. Del. ay. M^d^ ay. V^a^ ay. N. C. ay. S. C. no. Geo. divided.

Art: XV. being taken up, the words "high misdemesnor," were struck out, and "other crime" inserted, in order to comprehend all proper cases; it being doubtful whether "high misdemeanor" had not a technical meaning too limited.

Mr Butler and Mr Pinkney moved "to require fugitive slaves and servants to be delivered up like criminals."

Mr Wilson. This would oblige the Executive of the State to do it at the public expence.

Mr Sherman saw no more propriety in the public seizing and surrendering a slave or servant, than a horse.

Mr Butler withdrew his proposition in order that

some particular provision might be made apart from this article.

Art XV as amended was then agreed to nem: con:

Adjourned

WEDNESDAY AUGUST 29TH 1787. IN CONVENTION

Art: XVI. taken up.

Mr Williamson moved to substitute in place of it, the words of the Articles of Confederation on the same subject. He did not understand precisely the meaning of the article.

Mr Wilson and Docr Johnson supposed the meaning to be that Judgments in one State should be the ground of actions in other States, & that acts of the Legislatures should be included, for the sake of Acts of insolvency &c.

Mr Pinkney moved to commit Art XVI with the following proposition "To establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange"

Mr Ghorum was for agreeing to the article, and committing the proposition.

Mr Madison was for committing both. He wished the Legislature might be authorized to provide for the *execution* of Judgments in other States, under such regulations as might be expedient. He thought that this might be safely done, and was justified by the nature of the Union.

Mr Randolph said there was no instance of one

nation executing judgments of the Courts of another nation. He moved the following proposition:

"Whenever the Act of any State, whether Legislative, Executive or Judiciary shall be attested & exemplified under the seal thereof, such attestation and exemplification, shall be deemed in other States as full proof of the existence of that act—and its operation shall be binding in every other State, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the State, wherein the said act was done."

On the question for committing Art: XVI with Mr. Pinkney's motion N. H. no. Mas. no. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. Pa. ay. N. C. ay. S. C. ay. Geo. ay.

The motion of Mr. Randolph was also committed nem: con:

Mr. Govr. Morris moved to commit also the following proposition on the same subject.

"Full faith ought to be given in each State to the public acts, records, and judicial proceedings of every other State; and the Legislature shall by general laws, determine the proof and effect of such acts, records, and proceedings" and it was committed nem. contrad:

The Committee appointed for these references, were Mr. Rutlidge, Mr. Randolph, Mr. Gorham, Mr. Wilson, & Mr. Johnson.

Mr. Dickenson mentioned to the House that on examining Blackstone's Commentaries, he found that the term "ex post facto" related to criminal

cases only; that they would not consequently restrain the States from retrospective laws in civil cases, and that some further provision for this purpose would be requisite.

Art: VII Sect. 6 by ye Comittee of eleven reported to be struck out (see the 24 instant) being now taken up,

Mr Pinkney moved to postpone the Report in favor of the following proposition—"That no act of the Legislature for the purpose of regulating the commerce of the U. S. with foreign powers among the several States, shall be passed without the assent of two thirds of the members of each House." He remarked that there were five distinct commercial interests. 1. the fisheries & W. India trade, which belonged to the N. England States. 2. the interest of N. York lay in a free trade. 3. Wheat & flour the Staples of the two middle States (N. J. & Penn^a^). 4. Tob^o^ the staple of Maryl^d^ & Virginia & partly of N. Carolina. 5. Rice & Indigo, the staples of S. Carolina & Georgia. These different interests would be a source of oppressive regulations if no check to a bare majority should be provided. States pursue their interests with less scruple than individuals. The power of regulating commerce was a pure concession on the part of the S. States. They did not need the protection of the N. States at present.

Mr Martin 2^ded^ the motion

Genl Pinkney said it was the true interest of the S. States to have no regulation of commerce; but

considering the loss brought on the commerce of the Eastern States by the revolution, their liberal conduct towards the views [1] of South Carolina, and the interest the weak South[n] States had in being united with the strong Eastern States, he thought it proper that no fetters should be imposed on the power of making commercial regulations, and that his constituents though prejudiced against the Eastern States, would be reconciled to this liberality. He had himself, he said, prejudices ag[st] the Eastern States before he came here, but would acknowledge that he had found them as liberal and candid as any men whatever.

M[r] Clymer. The diversity of commercial interests of necessity creates difficulties, which ought not to be increased by unnecessary restrictions. The Northern & middle States will be ruined, if not enabled to defend themselves against foreign regulations.

M[r] Sherman, alluding to M[r] Pinkney's enumeration of particular interests, as requiring a security ag[st] abuse of the power; observed that the diversity was of itself a security, adding that to require more than a majority to decide a question was always embarrassing as had been experienced in cases requiring the votes of nine States in Congress.

M[r] Pinkney replied that his enumeration meant

[1] He meant the permission to import slaves. An understanding on the two subjects of *navigation* and *slavery*, had taken place between those parts of the Union, which explains the vote on the motion depending, as well as the language of Gen! Pinkney & others.— Madison's note.

the five minute interests. It still left the two great divisions of Northern & Southern interests.

Mr Govr Morris, opposed the object of the motion as highly injurious. Preferences to american ships will multiply them, till they can carry the Southern produce cheaper than it is now carried.—A navy was essential to security, particularly of the S. States, and can only be had by a navigation act encouraging american bottoms & seamen. In those points of view then alone, it is the interest of the S. States that navigation acts should be facilitated. Shipping he said was the worst & most precarious kind of property, and stood in need of public patronage.

Mr Williamson was in favor of making two thirds instead of a majority requisite, as more satisfactory to the Southern people. No useful measure he believed had been lost in Congress for want of nine votes. As to the weakness of the Southern States, he was not alarmed on that account. The sickliness of their climate for invaders would prevent their being made an object. He acknowledged that he did not think the motion requiring ⅔ necessary in itself, because if a majority of the Northern States should push their regulations too far the S. States would build ships for themselves; but he knew the Southern people were apprehensive on this subject and would be pleased with the precaution.

Mr Spaight was against the motion. The Southern States could at any time save themselves from oppression, by building ships for their own use.

Mr Butler differed from those who considered the

rejection of the motion as no concession on the part of the S. States. He considered the interest of these and of the Eastern States, to be as different as the interests of Russia and Turkey. Being notwithstanding desirous of conciliating the affections of the East: States, he should vote agst requiring $\frac{2}{3}$ instead of a majority.

Col: Mason. If the Gov^{t} is to be lasting, it must be founded in the confidence & affections of the people, and must be so constructed as to obtain these. The *Majority* will be governed by their interests. The Southern States are the *minority* in both Houses. Is it to be expected that they will deliver themselves bound hand & foot to the Eastern States, and enable them to exclaim, in the words of Cromwell on a certain occasion—"the lord hath delivered them into our hands.

Mr Wilson took notice of the several objections and remarked that if every peculiar interest was to be secured, *unanimity* ought to be required. The majority he said would be no more governed by interest than the minority. It was surely better to let the latter be bound hand and foot than the former. Great inconveniences had, he contended, been experienced in Congress from the article of confederation requiring nine votes in certain cases.

Mr Madison went into a pretty full view of the subject. He observed that the disadvantage to the S. States from a navigation act, lay chiefly in a temporary rise of freight, attended however with an increase of South^{n} as well as Northern Shipping—with

the emigration of Northern Seamen & merchants to the Southern States—& with a removal of the existing & injurious retaliations among the States on each other. The power of foreign nations to obstruct our retaliating measures on them by a corrupt influence would also be less if a majority sh^d^ be made competent than if ⅔ of each House sh^d^ be required to legislative acts in this case. An abuse of the power would be qualified with all these good effects. But he thought an abuse was rendered improbable by the provision of 2 branches—by the independence of the Senate, by the negative of the Executive, by the interest of Connecticut & N. Jersey which were agricultural, not commercial States; by the interior interest which was also agricultural in the most commercial States, by the accession of Western States which w^d^ be altogether agricultural. He added that the Southern States would derive an essential advantage in the general security afforded by the increase of our maritime strength. He stated the vulnerable situation of them all, and of Virginia in particular. The increase of the coasting trade, and of seamen, would also be favorable to the S. States, by increasing, the consumption of their produce. If the wealth of the Eastern should in a still greater proportion be augmented, that wealth w^d^ contribute the more to the public wants, and be otherwise a national benefit.

Mr Rutlidge was ag^st^ the motion of his colleague. It did not follow from a grant of the power to regulate trade, that it would be abused, At the worst a

navigation act could bear hard a little while only on the S. States. As we are laying the foundation for a great empire, we ought to take a permanent view of the subject and not look at the present moment only. He reminded the House of the necessity of securing the West India trade to this country. That was the great object, and a navigation act was necessary for obtaining it.

Mr Randolph said that there were features so odious in the constitution as it now stands, that he doubted whether he should be able to agree to it. A rejection of the motion would compleat the deformity of the system. He took notice of the argument in favor of giving the power over trade to a majority, drawn from the opportunity foreign powers would have of obstructing retaliatory measures if two thirds were made requisite. He did not think there was weight in that consideration. The difference between a majority & two thirds did not afford room for such an opportunity. Foreign influence would also be more likely to be exerted on the President who could require three fourths by his negative. He did not mean however to enter into the merits. What he had in view was merely to pave the way for a declaration which he might be hereafter obliged to make if an accumulation of obnoxious ingredients should take place, that he could not give his assent to the plan.

Mr Gorham. If the Government is to be so fettered as to be unable to relieve the Eastern States what motive can they have to join in it, and thereby tie

their own hands from measures which they could otherwise take for themselves. The Eastern States were not led to strengthen the Union by fear for their own safety. He deprecated the consequences of disunion, but if it should take place it was the Southern part of the Continent that had most reason to dread them. He urged the improbability of a combination against the interest of the Southern States, the different situations of the Northern & Middle States being a security against it. It was moreover certain that foreign ships would never be altogether excluded especially those of Nations in treaty with us.

On the question to postpone in order to take up Mr Pinkney's motion N. H. no. Mass. no. Ct no. N. J. no. Pa no. Del. no. Md ay. Va ay. N. C. ay. S. C. no. Geo. ay.

The Report of the Committee for striking out Sect. 6. requiring two thirds of each House to pass a navigation act was then agreed to, nem: con:

Mr Butler moved to insert after Art: XV. "If any person bound to service or labor in any of the U. States shall escape into another State, he or she shall not be discharged from such service or labor, in consequence of any regulations subsisting in the State to which they escape, but shall be delivered up to the person justly claiming their service or labor," which was agreed to nem: con:

Art: XVII being taken up, Mr Govr Morris moved to strike out the two last sentences, to wit "If the admission be consented to, the new States shall be

admitted on the same terms with the original States. But the Legislature may make conditions with the new States, concerning the public debt which shall be then subsisting."—He did not wish to bind down the Legislature to admit Western States on the terms here stated.

Mr Madison opposed the motion, insisting that the Western States neither would nor ought to submit to a union which degraded them from an equal rank with the other States.

Col: Mason. If it were possible by just means to prevent emigrations to the Western Country, it might be good policy. But go the people will as they find it for their interest, and the best policy is to treat them with that equality which will make them friends not enemies.

Mr Govr Morris did not mean to discourage the growth of the Western Country. He knew that to be impossible. He did not wish however to throw the power into their hands.

Mr Sherman, was ag^st^ the motion & for fixing an equality of privileges by the Constitution.

Mr Langdon was in favor of the motion, he did not know but circumstances might arise which would render it inconvenient to admit new States on terms of equality.

Mr Williamson was for leaving the Legislature free. The existing *small* States enjoy an equality now, and for *that* reason are admitted to it in the Senate. This reason is not applicable to new Western States.

On Mr Govr Morris's motion for striking out.

N. H. ay. Mas. ay. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. no. Va. no. N. C. ay. S. C. ay. Geo. ay.

Mr. L. Martin & Mr. Govr. Morris moved to strike out of art XVII, "but to such admission the consent of two thirds of the members present shall be necessary." Before any question was taken on this motion,

Mr. Govr. Morris moved the following proposition as a substitute for the XVII Art:

"New States may be admitted by the Legislature into this Union; but no new State shall be erected within the limits of any of the present States, without the consent of the Legislature of such State, as well as of the Genl. Legislature."

The first part to Union inclusive was agreed to nem: con:

Mr. L. Martin opposed the latter part. Nothing he said would so alarm the limited States as to make the consent of the large States claiming the Western lands, necessary to the establishment of new States within their limits. It is proposed to guarantee the States. Shall Vermont be reduced by force in favor of the States claiming it? Frankland & the Western county of Virginia were in a like situation.

On Mr. Govr. Morris's motion to substitute &c it was agreed to. N. H. no. Mass. ay. Ct. no. N. J. no. Pa. ay. Del. no. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Art: XVII—before the House, as amended.

Mr. Sherman was against it. He thought it un-

necessary. The Union cannot dismember a State without its consent.

Mr Langdon thought there was great weight in the argument of Mr Luther Martin, and that the proposition substituted by Mr Govr Morris would excite a dangerous opposition to the plan.

Mr Govr Morris thought on the contrary that the small States would be pleased with the regulation, as it holds up the idea of dismembering the large States.

Mr Butler. If new States were to be erected without the consent of the dismembered States, nothing but confusion would ensue. Whenever taxes should press on the people, demagogues would set up their schemes of new States.

Docr Johnson agreed in general with the ideas of Mr Sherman, but was afraid that as the clause stood, Vermont would be subjected to N. York, contrary to the faith pledged by Congress. He was of opinion that Vermont ought to be compelled to come into the Union.

Mr Langdon said his objections were connected with the case of Vermont. If they are not taken in, & remain exempt from taxes, it would prove of great injury to N. Hampshire and the other neighbouring States

Mr Dickinson hoped the article would not be agreed to. He dwelt on the impropriety of requiring the small States to secure the large ones in their extensive claims of territory.

Mr Wilson. When the *majority* of a State wish to

divide they can do so. The aim of those in opposition to the article, he perceived was that the Genl Government should abet the *minority*, & by that means divide a State against its own consent.

Mr Govr Morris. If the forced division of the States is the object of the new system, and is to be pointed agst one or two States, he expected the Gentlemen from these would pretty quickly leave us.

Adjourned

Thursday August 30th 1787. In Convention

Art XVII resumed for a question on it as amended by Mr Govr Morris's substitutes

Mr Carrol moved to strike out so much of the article as requires the consent of the State to its being divided. He was aware that the object of this prerequisite might be to prevent domestic disturbances; but such was our situation with regard to the Crown lands, and the sentiments of Maryland on that subject, that he perceived we should again be at sea, if no guard was provided for the right of the U. States to the back lands. He suggested that it might be proper to provide that nothing in the Constitution should affect the Right of the U. S. to lands ceded by G. Britain in the Treaty of peace, and proposed a committment to a member from each State. He assured the House that this was a point of a most serious nature. It was desirable above all things that the act of the Convention might be agreed to unanimously. But should this point be disregarded,

he believed that all risks would be run by a considerable minority, sooner than give their concurrence.

Mr. L. Martin 2ded the motion for a commitment.

Mr. Rutlidge is it to be supposed that the States are to be cut up without their own consent. The case of Vermont will probably be particularly provided for. There could be no room to fear, that Virginia or N. Carolina would call on the U. States to maintain their Government over the Mountains.

Mr. Williamson said that N. Carolina was well disposed to give up her western lands, but attempts at compulsion was not the policy of the U. S. He was for doing nothing in the constitution in the present case, and for leaving the whole matter in Statu quo.

Mr. Wilson was against the commitment. Unanimity was of great importance, but not to be purchased by the majority's yielding to the minority. He should have no objection to leaving the case of the new States as heretofore. He knew nothing that would give greater or juster alarm than the doctrine, that a political society is to be torn assunder without its own consent.

On Mr. Carrol's motion for commitment

N. H. no. Mas. no. Ct. no. N. J. ay. Pa. no. Del. ay. Md. ay. Va. no. N. C. no. S. C. no. Geo. no.

Mr. Sherman moved to postpone the substitute for Art: XVII agreed to yesterday in order to take up the following amendment

"The Legislature shall have power to admit other States into the Union, and new States to be formed

by the division or junction of States now in the Union, with the consent of the Legislature of such States." (The first part was meant for the case of Vermont to secure its admission.)

On the question, it passed in the negative

N. H. ay. Mas. ay. Ct. ay. N. J. no. Pa. ay. Del. no. Md. no. Va. no. N. C. no. S. C. ay. Geo. no.

Doct. Johnson moved to insert the words "hereafter formed or" after the words "shall be" in the substitute for Art: XVII (the more clearly to save Vermont as being already formed into a State, from a dependence on the consent of N. York for her admission.) The motion was agreed to Del. & Md. only dissenting.

Mr. Govr. Morris moved to strike out the word "limits" in the substitute, and insert the word "jurisdiction" (This also was meant to guard the case of Vermont, the jurisdiction of N. York not extending over Vermont which was in the exercise of sovereignty, tho' Vermont was within the asserted limits of New York.)

On this question

N. H. ay. Mas. ay. Ct. ay. N. J. no. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. no. S. C. no. Geo. no.

Mr. L. Martin urged the unreasonableness of forcing & guaranteeing the people of Virginia beyond the Mountains, the Western people of N. Carolina & of Georgia, & the people of Maine, to continue under the States now governing them, without the consent

of those States to their separation. Even if they should become the *majority*, the majority of *Counties*, as in Virginia may still hold fast the dominion over them. Again the majority may place the seat of Government entirely among themselves & for their own conveniency, and still keep the injured parts of the States in subjection, under the guarantee of the Gen.l Government ag.st domestic violence. He wished M.r Wilson had thought a little sooner of the value of *political* bodies. In the beginning, when the rights of the small States were in question, they were phantoms, ideal beings. Now when the Great States were to be affected, political societies were of a sacred nature. He repeated and enlarged on the unreasonableness of requiring the small States to guarantee the Western claims of the large ones.—It was said yesterday by M.r Gov.r Morris, that if the large States were to be split to pieces without their consent, their representatives here would take their leave. If the Small States are to be required to guarantee them in this manner, it will be found that the Representatives of other States will with equal firmness take their leave of the Constitution on the table.

It was moved by M.r L. Martin to postpone the substituted article, in order to take up the following.

"The Legislature of the U. S. shall have power to erect New States within as well as without the territory claimed by the several States or either of them, and admit the same into the Union: provided that nothing in this Constitution shall be construed to

affect the claim of the U. S. to vacant lands ceded to them by the late treaty of peace, which passed in the negative: N. J. Del. & Md only ay.

On the question to agree to Mr Govr Morris's substituted article as amended in the words following.

"New States may be admitted by the Legislature into the Union: but no new State shall be hereafter formed or erected within the jurisdiction of any of the present States without the consent of the Legislature of such State as well as of the General Legislature"

N. H. ay. Mas. ay. Ct ay. N. J. no. Pa ay. Del. no. Md no. Va ay. N. C. ay. S. C. ay. Geo. ay.

Mr Dickinson moved to add the following clause to the last—

"Nor shall any State be formed by the junction of two or more States or parts thereof, without the consent of the Legislature of such States, as well as of the Legislature of the U. States," which was agreed to without a count of the votes.

Mr Carrol moved to add—"Provided nevertheless that nothing in this Constitution shall be construed to affect the claim of the U. S. to vacant lands ceded to them by the Treaty of peace." This he said might be understood as relating to lands not claimed by any particular States, but he had in view also some of the claims of particular States.

Mr Wilson was agst the motion. There was nothing in the Constitution affecting one way or the other the claims of the U. S. & it was best to insert

nothing, leaving every thing on that litigated subject in statu quo.

Mr Madison considered the claim of the U. S. as in fact favored by the jurisdiction of the Judicial power of the U. S. over controversies to which they should be parties. He thought it best on the whole to be silent on the subject. He did not view the proviso of Mr. Carrol as dangerous; but to make it neutral & fair, it ought to go further & declare that the claims of particular States also should not be affected.

Mr Sherman thought the proviso harmless, especially with the addition suggested by Mr Madison in favor of the claims of particular States.

Mr Baldwin did not wish any undue advantage to be given to Georgia. He thought the proviso proper with the addition proposed. It should be remembered that if Georgia has gained much by the cession in the Treaty of peace, she was in danger during the war of a Uti possidetis.

Mr Rutlidge thought it wrong to insert a proviso where there was nothing which it could restrain, or on which it could operate.

Mr Carrol withdrew his motion and moved the following.

"Nothing in this Constitution shall be construed to alter the claims of the U. S. or of the individual States to the Western territory, but all such claims shall be examined into & decided upon, by the Supreme Court of the U. States."

Mr Govr Morris moved to postpone this in order to take up the following.

"The Legislature shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the U. States; and nothing in this constitution contained, shall be so construed as to prejudice any claims either of the U. S. or of any particular State." —The postponem^{t} ag^{d} to nem. con.

Mr L. Martin moved to amend the proposition of Mr Govr Morris by adding—"But all such claims may be examined into & decided upon by the supreme Court of the U. States."

Mr Govr Morris. this is unnecessary, as all suits to which the U. S. are parties, are already to be decided by the Supreme Court.

Mr L. Martin. it is proper in order to remove all doubts on this point.

Question on Mr L. Martin's amendatory motion

N. H. no. Mas. no. C^{t} no. N. J. ay. P^{a} no. Del. no. M^{d} ay. V^{a} no—States not farther called the negatives being sufficient & the point given up.

The Motion of Mr Govr Morris was then agreed to, M^{d} alone dissenting.

Art: XVIII being taken up,—the word "foreign" was struck out nem: con: as superfluous, being implied in the term "invasion."

Mr Dickinson moved to strike out "on the application of its Legislature, against" He thought it of essential importance to the tranquility of the U. S. that they should in all cases suppress domestic violence, which may proceed from the State Legislature

itself, or from disputes between the two branches where such exist.

Mr Dayton mentioned the Conduct of Rho: Island as shewing the necessity of giving latitude to the power of the U. S. on this subject.

On the question

N. H. no. Mas. no. Ct no. N. J. ay. Pa ay. Del. ay. Md no. Va no. N. C. no. S. C. no. Geo. no.

On a question for striking out "domestic violence" and insertg "insurrections—" It passed in the negative.

N. H. no. Mas. no. Ct no. N. J. ay. Pa no. Del. no. Md no. Va ay. N. C. ay. S. C. ay. Geo. ay.

Mr Dickinson moved to insert the words, "or Executive" after the words "application of its Legislature."—The occasion itself he remarked might hinder the Legislature from meeting.

On this question

N. H. ay. Mas. no. Ct ay. N. J. ay. Pa ay. Del. ay. Md divd Va no. N. C. ay. S. C. ay. Geo. ay.

Mr L. Martin moved to subjoin to the last amendment the words "in the recess of the Legislature" On which question

N. H. no. Mas. no. Ct no. Pa no. Del. no. Md ay. Va no. N. C. no. S. C. no. Geo. no.

On Question on the last clause as amended

N. H. ay. Mas. ay. Ct ay. N. J. ay. Pa ay. Del. no. Md no. Va ay. N. C. ay. S. C. ay. Geo ay.

Art: XIX taken up.

Mr. Govr. Morris suggested that the Legislature should be left at liberty to call a Convention, whenever they please.

The Art: was agreed to nem: con:

Art: XX. taken up.—"or affirmation" was added after "oath."

Mr. Pinkney moved to add to the Art:—"but no religious test shall ever be required as a qualification to any office or public trust under the authority of the U. States"

Mr. Sherman thought it unnecessary, the prevailing liberality being a sufficient security agst. such tests.

Mr. Govr. Morris & Genl. Pinkney approved the motion.

The motion was agreed to nem: con: and then the whole Article; N. C. only no—and Md. divided

Art: XXI. taken up, viz: "The ratifications of the Conventions of —— States shall be sufficient for organizing this Constitution."

Mr. Wilson proposed to fill the blank with "seven" that being a majority of the whole number & sufficient for the commencement of the plan.

Mr. Carrol moved to postpone the article in order to take up the Report of the Committee of Eleven (see Tuesday Augst. 28)— and on the question

N. H. no. Mas. no. Ct. no. N. J. ay. Pa. no. Del. ay. Md. ay. Va. no. N. C. no. S. C. no. Geo. no.

Mr. Govr. Morris thought the blank ought to be filled in a twofold way, so as to provide for the event of the ratifying States being contiguous which would

render a smaller number sufficient, and the event of their being dispersed, which w^d require a greater number for the introduction of the Government.

Mr Sherman observed that the States being now confederated by articles which require unanimity in changes, he thought the ratification in this case of ten States at least ought to be made necessary.

Mr Randolph was for filling the blank with "nine" that being a respectable majority of the whole, and being a number made familiar by the constitution of the existing Congress.

Mr Wilson mentioned "eight" as preferable.

Mr Dickinson asked whether the concurrence of Congress is to be essential to the establishment of the system, whether the refusing States in the Confederacy could be deserted—and whether Congress could concur in contravening the system under which they acted?

Mr Madison, remarked that if the blank should be filled with "seven" "eight," or "nine," the Constitution as it stands might be put in force over the whole body of the people, tho' less than a majority of them should ratify it.

Mr Wilson. As the Constitution stands, the States only which ratify can be bound. We must he said in this case go to the original powers of Society. The House on fire must be extinguished, without a scrupulous regard to ordinary rights.

Mr Butler was in favor of "nine." He revolted at the idea, that one or two States should restrain the rest from consulting their safety.

Mr. Carrol moved to fill the blank with "the thirteen," unanimity being necessary to dissolve the existing confederacy which had been unanimously established.

Mr. King thought this amendt. necessary, otherwise as the Constitution now stands it will operate on the whole though ratified by a part only. Adjourned.

Friday August 31st. 1787 In Convention.

Mr. King moved to add to the end of Art: XXI the words "between the said States" so as to confine the operation of the Govt. to the States ratifying it.

On the question

N. H. ay. Mas. ay. Ct. ay. N. J. ay. Pa. ay. Md. no. Virga. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. Madison proposed to fill the blank in the article with "any seven or more States entitled to thirty three members at least in the House of Representatives according to the allotment made in the 3 Sect: of Art: 4." This he said would require the concurrence of a majority of both the States and the people.

Mr. Sherman doubted the propriety of authorizing less than all the States to execute the Constitution, considering the nature of the existing Confederation. Perhaps all the States may concur, and on that supposition it is needless to hold out a breach of faith.

Mr. Clymer and Mr. Carrol moved to postpone the consideration of Art: XXI in order to take up the Reports of Committees not yet acted on. On this question, the States were equally divided. N. H. ay.

Mas. no. C^{t} div^{d} N. J. no. P^{a} ay. Del. ay. M^{d} ay. V^{a} no. N. C. no. S. C. no. G. ay.

Mr Govr Morris moved to strike out "Conventions of the" after "ratifications" leaving the States to pursue their own modes of ratification.

Mr Carrol mentioned the mode of altering the Constitution of Maryland pointed out therein, and that no other mode could be pursued in that State.

Mr King thought that striking out "Conventions," as the requisite mode was equivalent to giving up the business altogether. Conventions alone, which will avoid all the obstacles from the complicated formation of the Legislatures, will succeed, and if not positively required by the plan its enemies will oppose that mode.

Mr Govr Morris said he meant to facilitate the adoption of the plan, by leaving the modes approved by the several State Constitutions to be followed.

Mr Madison considered it best to require Conventions; Among other reasons, for this, that the powers given to the Genl Gov^{t} being taken from the State Gov^{ts} the Legislatures would be more disinclined than conventions composed in part at least of other men; and if disinclined, they could devise modes apparently promoting, but really thwarting the ratification. The difficulty in Maryland was no greater than in other States, where no mode of change was pointed out by the Constitution, and all officers were under oath to support it. The people were in fact, the fountain of all power, and by resorting to them, all difficulties were got over. They could alter

constitutions as they pleased. It was a principle in the Bills of rights, that first principles might be resorted to.

Mr. McHenry said that the officers of Govt. in Maryland were under oath to support the mode of alteration prescribed by the Constitution.

Mr. Ghorum urged the expediency of "Conventions" also Mr. Pinkney, for reasons formerly urged on a discussion of this question.

Mr. L. Martin insisted on a reference to the State Legislatures. He urged the danger of commotions from a resort to the people & to first principles, in which the Governments might be on one side and the people on the other. He was apprehensive of no such consequences however in Maryland, whether the Legislature or the people should be appealed to. Both of them would be generally against the Constitution. He repeated also the peculiarity in the Maryland Constitution.

Mr. King observed that the Constitution of Massachusetts was made unalterable till the year 1790, yet this was no difficulty with him. The State must have contemplated a recurrence to first principles before they sent deputies to this Convention.

Mr. Sherman moved to postpone art. XXI. & to take up art: XXII on which question,

N. H. no. Mas. no. Ct. ay. N. J. no. P. ay. Del. ay. Md. ay. Va. ay. N. C. no. S. C. no. Geo. no.

On Mr. Govr. Morris's motion to strike out "Conventions of the," it was negatived

N. H. no. Mas. no. C^{t} ay. N. J. no. P^{a} ay. Del. no. M^{d} ay. V^{a} no. S. C. no. Geo. ay.

On filling the blank in Art: XXI with "thirteen" moved by Mr. Carrol & Martin, N. H. no. Mas. no. C^{t} no, all except Maryland.

Mr Sherman & Mr Dayton moved to fill the blank with "ten."

Mr Wilson supported the motion of Mr Madison, requiring a majority both of the people and of States. Mr Clymer was also in favor of it.

Col: Mason was for preserving ideas familiar to the people. Nine States had been required in all great cases under the Confederation & that number was on that account preferable

On the question for "ten"

N. H. no. Mas. no. C^{t} ay. N. J. ay. P^{a} no. Del. no. M^{d} ay. V^{a} no. N. C. no. S. C. no. Geo. ay.

On question for "nine"

N. H. ay. Mas. ay. C^{t} ay. N. J. ay. P^{a} ay. Del. ay. M^{d} ay. V^{a} no. N. C. no. S. C. no. Geo. ay.

Art: XXI. as amended was then agreed to by all the States, Maryland excepted, & Mr Jenifer being ay.

Art. XXII taken up, to wit, "This Constitution shall be laid before the U. S. in Cong^{s} assembled for their approbation; and it is the opinion of this Convention that it should be afterwards submitted to a Convention chosen, in each State under the recommendation of its Legislature, in order to receive the ratification of such Convention."

Mr. Govr. Morris & Mr. Pinkney moved to strike out the words "for their approbation" On this question

N. H. ay. Mas. no. Ct. ay. N. J. ay.[1] Pa. ay. Del. ay. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. no.

Mr. Govr. Morris & Mr. Pinkney then moved to amend the art: so as to read

"This Constitution shall be laid before the U. S. in Congress assembled; and it is the opinion of this Convention that it should afterwards be submitted to a Convention chosen in each State, in order to receive the ratification of such Convention; to which end the several Legislatures ought to provide for the calling Conventions within their respective States as speedily as circumstances will permit." Mr. Govr. Morris said his object was to impress in stronger terms the necessity of calling Conventions in order to prevent enemies to the plan, from giving it the go by. When it first appears, with the sanction of this Convention, the people will be favorable to it. By degrees the State officers, & those interested in the State Govts will intrigue & turn the popular current against it.

Mr. L. Martin believed Mr. Morris to be right, that after a while the people would be agst it, but for a different reason from that alledged. He believed they would not ratify it unless hurried into it by surprize.

Mr. Gerry enlarged on the idea of Mr. L. Martin in

[1] In the printed Journal N. Jersey—no.—Madison's note.

which he concurred, represented the system as full of vices, and dwelt on the impropriety of destroying the existing Confederation, without the unanimous consent of the parties to it.

Question on Mr. Govr. Morris's & Mr. Pinkney's motion

N. H. ay. Mas. ay. Ct. no. N. J. no. Pa. ay. Del. ay. Md. no. Va. no. N. C. no. S. C. no. Geo. no.

Mr. Gerry moved to postpone art: XXII.

Col: Mason 2ded the motion, declaring that he would sooner chop off his right hand than put it to the Constitution as it now stands. He wished to see some points not yet decided brought to a decision, before being compelled to give a final opinion on this article. Should these points be improperly settled, his wish would then be to bring the whole subject before another general Convention.

Mr. Govr. Morris was ready for a postponement. He had long wished for another Convention, that will have the firmness to provide a vigorous Government, which we are afraid to do.

Mr. Randolph stated his idea to be, in case the final form of the Constitution should not permit him to accede to it, that the State Conventions should be at liberty to propose amendments to be submitted to another General Convention which may reject or incorporate them, as may be judged proper.

On the question for postponing

N. H. no. Mas. no. Ct. no. N. J. ay. Pa. no. Del. no. Md. ay. Va. no. N. C. ay. S. C. no. Geo. no.

On the question on Art: XXII

N. H. ay. Mas. ay. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Art: XXIII being taken up, as far as the words "assigned by Congress" inclusive, was agreed to nem: con: the blank having been first filled with the word "nine" as of course.

On a motion for postponing the residue of the clause, concerning the choice of the President &c.

N. H. no. Mas. ay. Ct. no. N. J. no. Pa. no. Del. ay. Md. no. Va. ay. N. C. ay. S. C. no. Geo. no.

Mr. Govr. Morris then moved to strike out the words "choose the President of the U. S. and"—this point, of choosing the President not being yet finally determined, & on this question

N. H. no. Mas. ay. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. divd. Va. ay. N. C. ay. S. C. ay.[1] Geo. ay.

Art: XXIII as amended was then agreed to nem: con:

The Report of the Grand Committee of eleven made by Mr. Sherman was then taken up (see Aug: 28)

On the question to agree to the following clause, to be inserted after sect. 4. art: VII. "nor shall any regulation of commerce or revenue give preference to the ports of one State over those of another." Agreed to nem: con:

[1] In printed Journal—S. C.—no.—Madison's note.

On the clause "or oblige vessels bound to or from any State to enter clear or pay duties in another"

Mr Madison thought the restriction w^d^ be inconvenient, as in the River Delaware, if a vessel cannot be required to make entry below the jurisdiction of Pennsylvaina.

Mr Fitzimmons admitted that it might be inconvenient, but thought it would be a greater inconvenience to require vessels bound to Philad^a^ to enter below the jurisdiction of the State.

Mr Ghorum & Mr Langdon, contended that the Gov^t^ would be so fettered by this clause, as to defeat the good purpose of the plan. They mentioned the situation of the trade of Mas. & N. Hampshire, the case of Sandy Hook which is in the State of N. Jersey, but where precautions ag^st^ smuggling into N. York, ought to be established by the Genl Government.

M^r^ M^c^Henry said the clause would not screen a vessel from being obliged to take an officer on board as a security for due entry &c.

Mr Carrol was anxious that the clause should be agreed to. He assured the House, that this was a tender point in Maryland.

Mr Jennifer urged the necessity of the clause in the same point of view.

On the question for agreeing to it

N. H. no. C^t^ ay. N. J. ay. P^a^ ay. Del. ay. M^d^ ay. V^a^ ay. N. C. ay. S. C. no. Geo. ay.

The word "tonnage" was struck out, nem: con: as comprehended in "duties."

On question On the clause of the Report "and all duties, imposts & excises, laid by the Legislature shall be uniform throughout the U. S." It was agreed to nem: con:[1]

On motion of Mr. Sherman it was agreed to refer such parts of the Constitution as have been postponed, and such parts of Reports as have not been acted on, to a Committee of a member from each State; the Committee appointed by ballot, being, Mr. Gilman, Mr. King, Mr. Sherman, Mr. Brearly, Mr. Govr. Morris, Mr. Dickinson, Mr. Carrol, Mr. Madison, Mr. Williamson, Mr. Butler, & Mr. Baldwin.

The House adjourned

SATURDAY SEPr. 1. 1787 IN CONVENTION.

Mr. Brearley from the Commee of eleven to which were referred yesterday the postponed part of the Constitution, & parts of Reports not acted upon, made the following partial report.

That in lieu of the 9th Sect: of Art: 6. the words following be inserted viz "The members of each House shall be ineligible to any Civil office under the authority of the U. S. during the time for which they shall respectively be elected, and no person holding an office under the U. S. shall be a member of either House during his continuance in office."

Mr. Rutlidge from the Committee to whom were

[1] In printed Journal N. H. and S. C. entered as in the negative.—Madison's note.

referred sundry propositions (see Aug: 29), together with art: XVI reported that the following additions be made to the Report—viz

After the word "States" in the last line on the Margin of the 3d page (see the printed Report),—add "to establish uniform laws on the subject of Bankruptcies."

And insert the following as Art: XVI viz

"Full faith and credit ought to be given in each State to the public acts, records, and Judicial proceedings of every other State, and the Legislature shall, by general laws prescribe the manner in which such acts, Records, & proceedings shall be proved, and the effect which Judgments obtained in one State, shall have in another."

After receiving these reports

The House adjourned to 10OC on Monday next

MONDAY SEPR 3 1787. IN CONVENTION

Mr Govr Morris moved to amend the Report concerning the respect to be paid to Acts Records &c of one State, in other States (see Sepr 1.) by striking out "judgments obtained in one State shall have in another" and to insert the word "thereof" after the word "effect"

Col: Mason favored the motion, particularly if the "effect" was to be restrained to judgments & Judicial proceedings

Mr Wilson remarked, that if the Legislature were

not allowed to *declare the effect* the provision would amount to nothing more than what now takes place among all Independent Nations.

Doc^{r} Johnson thought the amendment as worded would authorize the Genl Legislature to declare the effect of Legislative acts of one State in another State.

Mr Randolph considered it as strengthening the general objection agst the plan, that its definition of the powers of the Government was so loose as to give it opportunities of usurping all the State powers. He was for not going farther than the Report, which enables the Legislature to provide for the effect of *Judgments*.

On the amendment, as moved by Mr Govr Morris

Mas. ay. C^{t} ay. N. J. ay. P^{a} ay. M^{d} no. V^{a} no. N. C. ay. S. C. ay. Geo. no.

On motion of Mr Madison, "ought to" were struck out, and "shall" inserted; and "shall" between "Legislature" & "by general laws" struck out, and "may" inserted, nem: con:

On the question to agree to the report as amended viz "Full faith & credit shall be given in each State to the public acts, records & judicial proceedings of every other State, and the Legislature may by general laws prescribe the manner in which such acts records & proceedings shall be proved, and the effect thereof" Agreed to with^{t} a count of Sts.

The clause in the Report "To establish uniform laws on the subject of Bankruptcies" being taken up.

Mr Sherman observed that Bankruptcies were in

some cases punishable with death by the laws of England, & He did not chuse to grant a power by which that might be done here.

Mr. Govr. Morris said this was an extensive & delicate subject. He would agree to it because he saw no danger of abuse of the power by the Legislature of the U. S.

On the question to agree to the clause

N. H. ay. Mas. ay. Ct. no. N. J. ay. Pa. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. Pinkney moved to postpone the Report of the Committee of Eleven (see Sepr. 1.) in order to take up the following,

"The members of each House shall be incapable of holding any office under the U. S. for which they or any other for their benefit, receive any salary, fees or emoluments of any kind, and the acceptance of such office shall vacate their seats respectively." He was strenuously opposed to an ineligibility of members to office, and therefore wished to restrain the proposition to a mere incompatibility. He considered the eligibility of members of the Legislature to the honourable offices of Government, as resembling the policy of the Romans, in making the temple of virtue the road to the temple of fame.

On this question

N. H. no. Mas. no. Ct. no. N. J. no. Pa. ay. Md. no. Va. no. N. C. ay. S. C. no. Geo. no.

Mr. King moved to insert the word "created" before the word "during" in the Report of the Committee. This he said would exclude the members of

the first Legislature under the Constitution, as most of the offices w^d^ then be created.

Mr Williamson 2^ded^ the motion. He did not see why members of the Legislature should be ineligible to *vacancies* happening during the term of their election.

Mr Sherman was for entirely incapacitating members of the Legislature. He thought their eligibility to offices would give too much influence to the Executive. He said the incapacity ought at least to be extended to cases where salaries should be *increased*, as well as *created*, during the term of the member. He mentioned also the expedient by which the restriction could be evaded to wit: an existing officer might be translated to an office created, and a member of the Legislature be then put into the office vacated.

Mr Govr Morris contended that the eligibility of members to office w^d^ lessen the influence of the Executive. If they cannot be appointed themselves, the Executive will appoint their relations & friends, retaining the service & votes of the members for his purposes in the Legislature. Whereas the appointment of the members deprives him of such an advantage.

Mr Gerry, thought the eligibility of members would have the effect of opening batteries ag^st^ good officers, in order to drive them out & make way for members of the Legislature.

Mr Gorham was in favor of the amendment. Without it we go further than has been done in any of the

States, or indeed any other Country. The experience of the State Governments where there was no such ineligibility, proved that it was not necessary; on the contrary that the eligibility was among the inducements for fit men to enter into the Legislative service.

Mr Randolph was inflexibly fixed against inviting men into the Legislature by the prospect of being appointed to offices.

Mr Baldwin remarked that the example of the States was not applicable. The Legislatures there are so numerous that an exclusion of their members would not leave proper men for offices. The case would be otherwise in the General Government.

Col: Mason. Instead of excluding merit, the ineligibility will keep out corruption, by excluding office-hunters.

Mr Wilson considered the exclusion of members of the Legislature as increasing the influence of the Executive as observed by Mr Govr Morris at the same time that it would diminish, the general energy of the Government. He said that the legal disqualification for office would be odious to those who did not wish for office, but did not wish either to be marked by so degrading a distinction.

Mr Pinkney. The first Legislature will be composed of the ablest men to be found. The States will select such to put the Government into operation. Should the Report of the Committee or even the amendment be agreed to, The great offices, even those of the Judiciary Department which are to

continue for life, must be filled while those most capable of filling them will be under a disqualification.

On the question on Mr King's motion

N. H. ay. Mas. ay. Ct no. N. J. no. Pa ay. Md no. Va ay. N. C. ay. S. C. no. Geo. no.

The amendment being thus lost by the equal division of the States, Mr Williamson moved to insert the words "created or the emoluments whereof shall have been increased" before the word "during" in the Report of the Committee.

Mr King 2ded the motion, & on the question

N. H. ay. Mas. ay. Ct no. N. J. no. Pa. ay. Md no. Va ay. N. C. ay. S. C. no. Geo. divided.

The last clause rendering a Seat in the Legislature & an office incompatible was agreed to nem. con:

The Report as amended & agreed to is as follows.

"The members of each House shall be ineligible to any Civil office under the authority of the U. States, created, or the emoluments whereof shall have been increased during the time for which they shall respectively be elected—And no person holding any office under the U. S. shall be a member of either House during his continuance in office."

Adjourned.

Tuesday Sept 4. 1787. In Convention

Mr Brearly from the Committee of eleven made a further partial Report as follows

"The Committee of Eleven to whom sundry resolutions &c were referred on the 31st of August, report

that in their opinion the following additions and alterations should be made to the Report before the Convention, viz [1]

(1.) The first clause of sect: 1. art. 7. to read as follows—'The Legislature shall have power to lay and collect taxes duties imposts & excises, to pay the debts and provide for the common defence & general welfare of the U. S.'

(2.) At the end of the 2d clause of sect. 1. art. 7. add 'and with the Indian tribes.'

(3.) In the place of the 9th art. Sect. 1. to be inserted 'The Senate of the U. S. shall have power to try all impeachments; but no person shall be convicted without the concurrence of two thirds of the members present.'

(4.) After the word 'Excellency' in sect. 1. art. 10. to be inserted. 'He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected in the following manner, viz. Each State shall appoint in such manner as its Legislature may direct, a num-

[1] This is an exact copy. The variations in that in the printed Journal are occasioned by its incorporation of subsequent amendments. This remark is applicable to other cases.—Madison's note. The report was copied by the Secretary of the Convention, William Jackson, into the Journal, after it had been read. Afterwards two sentences were altered by interlining with lead pencil. The alterations (indicated by italics) are as follows: Paragraph 4, "The person having the greatest number of votes . . . if such number be a majority of *the whole number* of the electors *appointed*." Paragraph 7, "But no treaty, *except treaties of peace*, shall be made," etc. The changes in paragraph 4 are unimportant: the change in paragraph 7 was an amendment offered by Madison September 7th, and adopted.—Const. MSS.—*Journal of Federal Convention*, p. 323, *et seq.*

ber of electors equal to the whole number of Senators and members of the House of Representatives, to which the State may be entitled in the Legislature. The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify and transmit sealed to the Seat of the Gen! Government, directed to the President of the Senate—The President of the Senate shall in that House open all the certificates, and the votes shall be then & there counted. The Person having the greatest number of votes shall be the President, if such number be a majority of that of the electors; and if there be more than one who have such a majority, and have an equal number of votes, then the Senate shall immediately choose by ballot one of them for President: but if no person have a majority, then from the five highest on the list, the Senate shall choose by ballot the President, and in every case after the choice of the President, the person having the greatest number of votes shall be vice-president: but if there should remain two or more who have equal votes, the Senate shall choose from them the Vice-President. The Legislature may determine the time of choosing and assembling the Electors, and the manner of certifying and transmitting their votes.'

(5) 'Sect. 2. No person except a natural born citizen or a Citizen of the U. S. at the time of the

adoption of this Constitution shall be eligible to the office of President; nor shall any person be elected to that office, who shall be under the age of thirty five years, and who has not been in the whole, at least fourteen years a resident within the U. S.'

(6) 'Sect. 3. The vice-president shall be ex officio President of the Senate, except when they sit to try the impeachment of the President, in which case the Chief Justice shall preside, and excepting also when he shall exercise the powers and duties of President, in which case & in case of his absence, the Senate shall chuse a President pro tempore—The vice President when acting as President of the Senate shall not have a vote unless the House be equally divided.'

(7) 'Sect. 4. The President by and with the advice and Consent of the Senate, shall have power to make Treaties; and he shall nominate and by and with the advice and consent of the Senate shall appoint ambassadors, and other public ministers, Judges of the Supreme Court, and all other Officers of the U. S. whose appointments are not otherwise herein provided for. But no Treaty shall be made without the consent of two thirds of the members present.'

(8) After the words—"into the service of the U. S." in sect. 2. art: 10. add 'and may require the opinion in writing of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices.'

The latter part of Sect. 2. art: 10. to read as follows.

(9) 'He shall be removed from his office on

impeachment by the House of Representatives, and conviction by the Senate, for Treason, or bribery, and in case of his removal as aforesaid, death, absence, resignation or inability to discharge the powers or duties of his office, the vice-president shall exercise those powers and duties until another President be chosen, or until the inability of the President be removed'

The (1st) clause of the Report was agreed to, nem. con.

The (2) clause was also agreed to nem: con:

The (3) clause was postponed in order to decide previously on the mode of electing the President.

The (4) clause was accordingly taken up.

Mr Gorham disapproved of making the next highest after the President, the vice-President, without referring the decision to the Senate in case the next highest should have less than a majority of votes. As the regulation stands a very obscure man with very few votes may arrive at that appointment

Mr Sherman said the object of this clause of the report of the Committee was to get rid of the ineligibility, which was attached to the mode of election by the Legislature, & to render the Executive independent of the Legislature. As the choice of the President was to be made out of the five highest, obscure characters were sufficiently guarded against in that case; and he had no objection to requiring the vice-President to be chosen in like manner, where the choice was not decided by a majority in the first instance

Mr Madison was apprehensive that by requiring both the President & vice President to be chosen out of the five highest candidates, the attention of the electors would be turned too much to making candidates instead of giving their votes in order to a definitive choice. Should this turn be given to the business, The election would, in fact be consigned to the Senate altogether. It would have the effect at the same time, he observed, of giving the nomination of the candidates to the largest States.

Mr Govr Morris concurred in, & enforced the remarks of Mr Madison.

Mr Randolph & Mr Pinkney wished for a particular explanation & discussion of the reasons for changing the mode of electing the Executive.

Mr Govr Morris said he would give the reasons of the Committee and his own. The 1st was the danger of intrigue & faction if the appointm^t^ should be made by the Legislature. 2 the inconveniency of an ineligibility required by that mode in order to lessen its evils. 3. The difficulty of establishing a Court of Impeachments, other than the Senate which would not be so proper for the trial nor the other branch for the impeachment of the President, if appointed by the Legislature. 4. Nobody had appeared to be satisfied with an appointment by the Legislature. 5. Many were anxious even for an immediate choice by the people. 6. the indispensable necessity of making the Executive independent of the Legislature.—As the Electors would vote at the same time throughout the U. S. and at so great a distance from each other,

the great evil of cabal was avoided. It would be impossible also to corrupt them. A conclusive reason for making the Senate instead of the Supreme Court the Judge of impeachments, was that the latter was to try the President after the trial of the impeachment.

Col: Mason confessed that the plan of the Committee had removed some capital objections, particularly the danger of cabal and corruption. It was liable however to this strong objection, that nineteen times in twenty the President would be chosen by the Senate, an improper body for the purpose

Mr Butler thought the mode not free from objections, but much more so than an election by the Legislature, where as in elective monarchies, cabal faction & violence would be sure to prevail.

Mr Pinkney stated as objections to the mode 1. that it threw the whole appointment in fact into the hands of the Senate. 2. The Electors will be strangers to the several candidates and of course unable to decide on their comparative merits. 3. It makes the Executive reeligible which will endanger the public liberty. 4. It makes the same body of men which will in fact elect the President his Judges in case of an impeachment.

Mr Williamson had great doubts whether the advantage of reeligibility would balance the objection to such a dependence of the President on the Senate for his reappointment. He thought at least the Senate ought to be restrained to the *two* highest on the list

Mr Govr Morris said the principal advantage aimed at was that of taking away the opportunity for cabal. The President may be made if thought necessary ineligible on this as well as on any other mode of election. Other inconveniences may be no less redressed on this plan than any other.

Mr Baldwin thought the plan not so objectionable when well considered, as at first view. The increasing intercourse among the people of the States, would render important characters less & less unknown; and the Senate would consequently be less & less likely to have the eventual appointment thrown into their hands.

Mr Wilson. This subject has greatly divided the House, and will also divide the people out of doors. It is in truth the most difficult of all on which we have had to decide. He had never made up an opinion on it entirely to his own satisfaction. He thought the plan on the whole a valuable improvement on the former. It gets rid of one great evil, that of cabal & corruption; & Continental Characters will multiply as we more & more coalesce, so as to enable the electors in every part of the Union to know & judge of them. It clears the way also for a discussion of the question of re-eligibility on its own merits which the former mode of election seemed to forbid. He thought it might be better however to refer the eventual appointment to the Legislature than to the Senate, and to confine it to a smaller number than five of the Candidates. The eventual election by the Legislature wd not open cabal anew,

as it would be restrained to certain designated objects of choice, and as these must have had the previous sanction of a number of the States; and if the election be made as it ought as soon as the votes of the Electors are opened & it is known that no one has a majority of the whole there can be little danger of corruption. Another reason for preferring the Legislature to the Senate in this business was that the House of Repr will be so often changed as to be free from the influence & faction to which the permanence of the Senate may subject that branch.

Mr Randolph preferred the former mode of constituting the Executive, but if the change was to be made, he wished to know why the eventual election was referred to the *Senate* and not to the *Legislature*? He saw no necessity for this and many objections to it. He was apprehensive also that the advantage of the eventual appointment would fall into the hands of the States near the seat of Government.

Mr Govr Morris said the *Senate* was preferred because fewer could then say to the President, you owe your appointment to us. He thought the President would not depend so much on the Senate for his reappointment as on his general good conduct.

The further consideration of the Report was postponed that each member might take a copy of the remainder of it.

The following motion was referred to the Committee of Eleven—to wit,—" To prepare & report a plan for defraying the expences of the Convention "

[1] M[r] Pinkney moved a clause declaring "that each House should be judge of the privilege of its own members." M[r] Gov[r] Morris 2[ded] the motion

M[r] Randolph & M[r] Madison expressed doubts as to the propriety of giving such a power, & wished for a postponement.

M[r] Gov[r] Morris thought it so plain a case that no postponement could be necessary.

M[r] Wilson thought the power involved, and the express insertion of it needless. It might beget doubts as to the power of other public bodies, as Courts &c. Every Court is the judge of its own privileges.

M[r] Madison distinguished between the power of Judging of privileges previously & duly established, and the effect of the motion which would give a discretion to each House as to the extent of its own privileges. He suggested that it would be better to make provision for ascertaining by *law*, the privileges of each House, than to allow each House to decide for itself. He suggested also the necessity of considering what privileges ought to be allowed to the Executive.

Adjourned

WEDNESDAY SEP[R] 5. 1787. IN CONVENTION.

M[r] Brearley from the Committee of Eleven made a farther report as follows,

(1) To add to the clause "to declare war" the words "and grant letters of marque and reprisal"

[1] This motion not contained in the printed Journal—Madison's note.

(2) To add to the clause "to raise and support armies" the words "but no appropriation of money to that use shall be for a longer term than two years"

(3) Instead of sect: 12. art 6. say—"All bills for raising revenue shall originate in the House of Representatives, and shall be subject to alterations and amendments by the Senate: no money shall be drawn from the Treasury, but in consequence of appropriations made by law."

(4) Immediately before the last clause of sect. 1. art. 7. insert "To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by Cession of particular States and the acceptance of the Legislature become the Seat of the Government of the U. S and to exercise like authority over all places purchased for the erection of Forts, Magazines, Arsenals, Dock Yards, and other needful buildings."

(5) "To promote the progress of Science and useful arts by securing for limited times to authors & inventors, the exclusive right to their respective writings and discoveries"

This report being taken up,—The (1) clause was agreed to nem: con:

To the (2) clause Mr Gerry objected that it admitted of appropriations to an army, for two years instead of one, for which he could not conceive a reason, that it implied that there was to be a standing army which he inveighed against as dangerous to liberty, as unnecessary even for so great an extent of Country as this, and if necessary, some restriction

on the number & duration ought to be provided: Nor was this a proper time for such an innovation. The people would not bear it.

Mr. Sherman remarked that the appropriations were permitted only, not required to be for two years. As the Legislature is to be biennally elected, it would be inconvenient to require appropriations to be for one year, as there might be no Session within the time necessary to renew them. He should himself he said like a reasonable restriction on the number and continuance of an army in time of peace.

The (2) clause was then agreed to nem: con:

The (3) clause, Mr. Govr. Morris moved to postpone. It had been agreed to in the Committee on the ground of compromise, and he should feel himself at liberty to dissent to it, if on the whole he should not be satisfied with certain other parts to be settled.— Mr. Pinkney 2ded the motion

Mr. Sherman was for giving immediate ease to those who looked on this clause as of great moment, and for trusting to their concurrence in other proper measures.

On the question for postponing

N. H. ay. Mas. no. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. no. N. C. ay. S. C. ay. Geo. ay.

So much of the (4) clause as related to the seat of Government was agreed to nem: con:

On the residue to wit, "to exercise like authority over all places purchased for forts &c.

Mr. Gerry contended that this power might be made

use of to enslave any particular State by buying up its territory, and that the strongholds proposed would be a means of awing the State into an undue obedience to the Gen[l] Government.

M[r] King thought himself the provision unnecessary, the power being already involved: but would move to insert after the word "purchased" the words "by the consent of the Legislature of the State" This would certainly make the power safe.

M[r] Gov[r] Morris 2[ded] the motion, which was agreed to nem: con: as was then the residue of the clause as amended.

The (5) clause was agreed to nem: con:

The following Resolution & order being reported from the Committee of eleven, to wit,

"Resolved that the U. S. in Congress be requested to allow and cause to be paid to the Secretary and other officers of this Convention such sums in proportion to their respective times of service, as are allowed to the Secretary & similar officers of Congress."

"Ordered that the Secretary make out & transmit to the Treasury office of the U. S. an account for the said services & for the incidental expences of this Convention"

The resolution & order were separately agreed to nem: con:

M[r] Gerry gave notice that he should move to reconsider articles XIX. XX. XXI. XXII.

M[r] Williamson gave like notice as to the article fixing the number of Representatives, which he

thought too small. He wished also to allow Rho: Island more than one, as due to her probable number of people, and as proper to stifle any pretext arising from her absence on the occasion.

The Report made yesterday as to the appointment of the Executive being then taken up. Mr. Pinkney renewed his opposition to the mode, arguing 1. that the electors will not have sufficient knowledge of the fittest men, & will be swayed by an attachment to the eminent men of their respective States. Hence 2dly. the dispersion of the votes would leave the appointment with the Senate, and as the President's reappointment will thus depend on the Senate he will be the mere creature of that body. 3. He will combine with the Senate agst. the House of Representatives. 4. This change in the mode of election was meant to get rid of the ineligibility of the President a second time, whereby he will become fixed for life under the auspices of the Senate.

Mr. Gerry did not object to this plan of constituting the Executive in itself, but should be governed in his final vote by the powers that may be given to the President.

Mr. Rutlidge was much opposed to the plan reported by the Committee. It would throw the whole power into the Senate. He was also against a reeligibility. He moved to postpone the Report under consideration & take up the original plan of appointment by the Legislature, to wit. "He shall be elected by joint ballot by the Legislature to which election a majority of the votes of the members

present shall be required: He shall hold his office during the term of seven years; but shall not be elected a second time."

On this motion to postpone

N. H. div^{d} Mas. no. C^{t} no. N. J. no. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. ay. S. C. ay. Geo. no.

Col. Mason admitted that there were objections to an appointment by the Legislature as originally planned. He had not yet made up his mind, but would state his objections to the mode proposed by the Committee. 1. It puts the appointment in fact into the hands of the Senate; as it will rarely happen that a majority of the whole votes will fall on any one candidate: and as the existing President will always be one of the 5 highest, his reappointment will of course depend on the Senate. 2. Considering the powers of the President & those of the Senate, if a coalition should be established between these two branches, they will be able to subvert the Constitution — The great objection with him would be removed by depriving the Senate of the eventual election. He accordingly moved to strike out the words "if such number be a majority of that of the electors."

Mr Williamson 2^{ded} the motion. He could not agree to the clause without some such modification. He preferred making the highest tho' not having a majority of the votes, President, to a reference of the matter to the Senate. Referring the appointment to the Senate lays a certain foundation for corruption & aristocracy.

Mr Govr Morris thought the point of less consequence than it was supposed on both sides. It is probable that a majority of the votes will fall on the same man. As each Elector is to give two votes, more than $\frac{1}{4}$ will give a majority. Besides as one vote is to be given to a man out of the State, and as this vote will not be thrown away, $\frac{1}{2}$ the votes will fall on characters eminent & generally known. Again if the President shall have given satisfaction, the votes will turn on him of course, and a majority of them will reappoint him, without resort to the Senate: If he should be disliked, all disliking him, would take care to unite their votes so as to ensure his being supplanted.

Col. Mason those who think there is no danger of there not being a majority for the same person in the first instance, ought to give up the point to those who think otherwise.

Mr Sherman reminded the opponents of the new mode proposed that if the small States had the advantage in the Senate's deciding among the five highest candidates the large States would have in fact the nomination of these candidates.

On the motion of Col: Mason

N. H. no. Mas. no. C^t^ no. N. J. no. P^a^ no. Del. no. M^d^ ay.[1] V^a^ no. N. C. ay. S. C. no. Geo. no.

Mr Wilson moved to strike out "Senate" and insert the word "Legislature"

Mr Madison considered it as a primary object to

[1] In printed Journal Maryland—no—Madison's note.

render an eventual resort to any part of the Legislature improbable. He was apprehensive that the proposed alteration would turn the attention of the large States too much to the appointment of candidates, instead of aiming at an effectual appointment of the officer, as the large States would predominate in the Legislature which would have the final choice out of the candidates. Whereas if the Senate in which the small States predominate should have the final choice, the concerted effort of the large States would be to make the appointment in the first instance conclusive.

Mr. Randolph. We have in some revolutions of this plan made a bold stroke for Monarchy. We are now doing the same for an aristocracy. He dwelt on the tendency of such an influence in the Senate over the election of the President in addition to its other powers, to convert that body into a real & dangerous Aristocracy.

Mr. Dickinson was in favor of giving the eventual election to the Legislature, instead of the Senate. It was too much influence to be superadded to that body.

On the question moved by Mr. Wilson

N. H. divd Mas. no. Ct. no. N. J. no. Pa. ay. Del. no. Md. no. Va. ay. N. C. no. S. C. ay. Geo. no.

Mr. Madison & Mr. Williamson moved to strike out the word "majority" and insert "one-third" so that the eventual power might not be exercised if less than a majority, but not less than $\frac{1}{3}$ of the Electors should vote for the same person.

Mr Gerry objected that this would put it in the power of three or four States to put in whom they pleased.

Mr Williamson. There are seven States which do not contain one third of the people. If the Senate are to appoint, less than one sixth of the people will have the power.

On the question

N. H. no. Mas. no. Ct no. N. J. no. Pa no. Del. no. Md no. Va ay. N. C. ay. S. C. no. Geo. no.

Mr Gerry suggested that the eventual election should be made by six Senators and seven Representatives chosen by joint ballot of both Houses.

Mr King observed that the influence of the Small States in the Senate was somewhat balanced by the influence of the large States in bringing forward the candidates,[1] and also by the Concurrence of the small States in the Committee in the clause vesting the exclusive origination of Money bills in the House of Representatives.

Col: Mason moved to strike out the word "five" and insert the word "three" as the highest candidates for the Senate to choose out of.

[1] This explains the compromise mentioned above by Mr Govr Morris. Col. Mason, Mr Gerry & other members from large States set great value on this privilege of originating money bills. Of this the members from the small States, with some from the large States who wished a high mounted Govt endeavored to avail themselves, by making that privilege, the price of arrangements in the constitution favorable to the small States, and to the elevation of the Government. —Madison's note.

Mr. Gerry 2ded the motion

Mr. Sherman would sooner give up the plan. He would prefer seven or thirteen.

On the question moved by Col: Mason & Mr. Gerry

N. H. no. Mas. no. Ct. no. N. J. no. Pa. no. Delaware [and] Md. no. Va. ay. N. C. ay. S. C. no. Geo. no.

Mr. Spaight and Mr. Rutlidge moved to strike out "five" and insert "thirteen"—to which all the States disagreed—except N. C. & S. C.

Mr. Madison & Mr. Williamson moved to insert after "Electors" the words "who shall have balloted" so that the non voting electors not being counted might not increase the number necessary as a majority of the whole to decide the choice without the agency of the Senate.

On this question

N. H. no. Mas. no. Ct. no. N. J. no. Pa. ay. Del. no. Md. ay. Va. ay. N. C. ay. S. C. no. Geo. no.

Mr. Dickinson moved, in order to remove ambiguity from the intention of the clause as explained by the vote, to add, after the words "if such number be a majority of the whole number of the Electors" the word "appointed"

On this motion

N. H. ay. Mas. ay. Con. ay. N. J. ay. Pa. ay. Delaware [and] Md. ay. Va. no. N. C. no. S. C. ay. Geo. ay.

Col: Mason. As the mode of appointment is now

regulated, he could not forbear expressing his opinion that it is utterly inadmissible. He would prefer the Government of Prussia to one which will put all power into the hands of seven or eight men, and fix an Aristocracy worse than absolute monarchy.

The words "and of their giving their votes" being inserted on motion for that purpose, after the words "The Legislature may determine the time of chusing and assembling the Electors"

The House adjourned.

THURSDAY SEP^{R} 6. 1787. IN CONVENTION

MR King and MR Gerry moved to insert in the (5) [1] clause of the Report (see Sep^{R} 4) after the words "may be entitled in the Legislature" the words following—"But no person shall be appointed an elector who is a member of the Legislature of the U. S. or who holds any office of profit or trust under the U. S." which passed nem: con:

MR Gerry proposed as the President was to be elected by the Senate out of the five highest candidates, that if he should not at the end of his term be re-elected by a majority of the Electors, and no other candidate should have a majority, the eventual election should be made by the Legislature. This he said would relieve the President from his particular dependence on the Senate for his continuance in office.

[1] This is a mistake and should be fourth clause. See p. 362.

Mr King liked the idea, as calculated to satisfy particular members and promote unanimity & as likely to operate but seldom.

Mr Read opposed it, remarking that if individual members were to be indulged, alterations would be necessary to satisfy most of them.

Mr Williamson espoused it as a reasonable precaution against the undue influence of the Senate.

Mr Sherman liked the arrangement as it stood, though he should not be averse to some amendments. He thought he said that if the Legislature were to have the eventual appointment instead of the Senate, it ought to vote in the case by States, in favor of the small States, as the large States would have so great an advantage in nominating the candidates.

Mr Govr Morris thought favorably of Mr Gerry's proposition. It would free the President from being tempted in naming to offices, to Conform to the will of the Senate, & thereby virtually give the appointments to office, to the Senate.

Mr Wilson said that he had weighed carefully the report of the Committee for remodelling the constitution of the Executive; and on combining it with other parts of the plan, he was obliged to consider the whole as having a dangerous tendency to aristocracy; as throwing a dangerous power into the hands of the Senate. They will have in fact, the appointment of the President, and through his dependence on them, the virtual appointment to offices; among others the Officers of the Judiciary Department. They are to make Treaties; and they are to

try all impeachments. In allowing them thus to make the Executive & Judiciary appointments, to be the Court of impeachments, and to make Treaties which are to be laws of the land, the Legislative, Executive & Judiciary powers are all blended in one branch of the Government. The power of making Treaties involves the case of subsidies, and here as an additional evil, foreign influence is to be dreaded. According to the plan as it now stands, the President will not be the man of the people as he ought to be, but the minion of the Senate. He cannot even appoint a tide-waiter without the Senate. He had always thought the Senate too numerous a body for making appointments to office. The Senate, will moreover in all probability be in constant Session. They will have high salaries. And with all those powers, and the President in their interest, they will depress the other branch of the Legislature, and aggrandize themselves in proportion. Add to all this, that the Senate sitting in conclave, can by holding up to their respective States various and improbable candidates, contrive so to scatter their votes, as to bring the appointment of the President ultimately before themselves. Upon the whole, he thought the new mode of appointing the President, with some amendments, a valuable improvement; but he could never agree to purchase it at the price of the ensuing parts of the Report, nor befriend a system of which they make a part.

Mr Govr Morris expressed his wonder at the observations of Mr Wilson so far as they preferred the

plan in the printed Report to the new modification of it before the House, and entered into a comparative view of the two, with an eye to the nature of Mr Wilsons objections to the last. By the first the Senate he observed had a voice in appointing the President out of all the Citizens of the U. S: by this they were limited to five candidates previously nominated to them, with a probability of being barred altogether by the successful ballot of the Electors. Here surely was no increase of power. They are now to appoint Judges nominated to them by the President. Before they had the appointment without any agency whatever of the President. Here again was surely no additional power. If they are to make Treaties as the plan now stands, the power was the same in the printed plan. If they are to try impeachments, the Judges must have been triable by them before. Wherein then lay the dangerous tendency of the innovations to establish an aristocracy in the Senate? As to the appointment of officers, the weight of sentiment in the House, was opposed to the exercise of it by the President alone; though it was not the case with himself. If the Senate would act as was suspected, in misleading the States into a fallacious disposition of their votes for a President, they would, if the appointment were withdrawn wholly from them, make such representations in their several States where they have influence, as would favor the object of their partiality.

Mr Williamson, replying to Mr Morris, observed that the aristocratic complexion proceeds from the

change in the mode of appointing the President which makes him dependent on the Senate.

Mr Clymer said that the aristocratic part to which he could never accede was that in the printed plan, which gave the Senate the power of appointing to offices.

Mr Hamilton said that he had been restrained from entering into the discussions by his dislike of the Scheme of Govt in General; but as he meant to support the plan to be recommended, as better than nothing, he wished in this place to offer a few remarks. He liked the new modification, on the whole, better than that in the printed Report. In this the President was a Monster elected for seven years, and ineligible afterwards; having great powers, in appointments to office, & continually tempted by this constitutional disqualification to abuse them in order to subvert the Government. Although he should be made re-eligible, still if appointed by the Legislature, he would be tempted to make use of corrupt influence to be continued in office. It seemed peculiarly desirable therefore that some other mode of election should be devised. Considering the different views of different States, & the different districts Northern Middle & Southern, he concurred with those who thought that the votes would not be concentered, and that the appointment would consequently in the present mode devolve on the Senate. The nomination to offices will give great weight to the President. Here then is a mutual connexion & influence, that will perpetuate the President, and

aggrandize both him & the Senate. What is to be the remedy? He saw none better than to let the highest number of ballots, whether a majority or not, appoint the President. What was the objection to this? Merely that too small a number might appoint. But as the plan stands, the Senate may take the candidate having the smallest number of votes, and make him President.

Mr. Spaight & Mr. Williamson moved to insert "seven" instead of "four" years for the term of the President[1]—

On this motion

N. H. ay. Mas. no. Ct. no. N. J. no. Pa. no. Del. no. Md. no. Va. ay. N. C. ay. S. C. no. Geo. no.

Mr. Spaight & Mr. Williamson, then moved to insert "six," instead of "four" On which motion

N. H. no. Mas. no. Ct. no. N. J. no. Pa. no. Del. no. Md. no. Va. no. N. C. ay. S. C. ay. Geo. no.

On the term "four" all the States were ay, except N. Carolina, no.

On the question (Clause 4. in the Report) for appointing President by electors—down to the words, —"entitled in the Legislature" inclusive

N. H. ay. Mas: ay. Cont. ay. N J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. no. S. C. no. Geo.— ay.

[1] An ineligibility wd have followed (tho' it would seem from the vote not in the opinion of all) this prolongation of the term.—Madison's note.

It was moved that the Electors meet at the seat of the Genl Gov^{t} which passed in the Negative N. C. only being ay.

It was moved to insert the words "under the seal of the State" after the word "transmit" in the 4th clause of the Report which was disagreed to; as was another motion to insert the words "and who shall have given their votes" after the word "appointed" in the 4th Clause of the Report as added yesterday on motion of Mr Dickinson.

On several motions, the words "in presence of the Senate and House of Representatives" were inserted after the word "counted" and the word "immediately" before the word "choose;" and the words "of the Electors" after the word "votes."

Mr Spaight said if the election by Electors is to be crammed down, he would prefer their meeting altogether and deciding finally without any reference to the Senate and moved "that the Electors meet at the seat of the General Government."

Mr Williamson 2^{ded} the motion, on which all the States were in the negative except N: Carolina.

On motion the words "But the election shall be on the same day throughout the U. S." were added after the words "transmitting their votes" N. H. ay. Mas. no. C^{t} ay. N. J. no. P^{a} ay. Del. no. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo—ay

On a question on the sentence in clause (4) "if such number be a majority of that of the Electors appointed"

N. H. ay. Mas. ay. C^{t} ay. N. J. ay. P^{a} no.

Del. ay. Md. ay. Va. no. N. C. no. S. C. ay. Geo. ay.

On a question on the clause referring the eventual appointment of the President to the Senate

N. H. ay. Mas. ay. Ct. ay. N. J. ay. Pa. ay. Del. ay. Va. ay. N. C. no. Here the call ceased.

Mr. Madison made a motion requiring ⅔ at least of the Senate to be present at the choice of a President. Mr. Pinkney 2ded the motion

Mr. Gorham thought it a wrong principle to require more than a majority in any case. In the present case it might prevent for a long time any choice of a President. On the question moved by Mr. M. and Mr. P.

N. H. ay. Mas. abst. Ct. no. N. J. no. Pa. no. Del. no. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. Williamson suggested as better than an eventual choice by the Senate, that this choice should be made by the Legislature, voting *by States* and not *per capita.*

Mr. Sherman suggested the "House of Reps." as preferable to the Legislature, and moved accordingly,

To strike out the words "The Senate shall immediately choose &c." and insert "The House of Representatives shall immediately choose by ballot one of them for President, the members from each State having one vote."

Col: Mason liked the latter mode best as lessening the aristocratic influence of the Senate.

On the motion of Mr. Sherman

N. H. ay. Mas. ay. Ct. ay. N. J. ay. Pa. ay.

Del. no. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. Govr. Morris suggested the idea of providing that in all cases, the President in office, should not be one of the five Candidates; but be only re-eligible in case a majority of the electors should vote for him. (This was another expedient for rendering the President independent of the Legislative body for his continuance in office.)

Mr. Madison remarked that as a majority of members wd. make a quorum in the H. of Reps. it would follow from the amendment of Mr. Sherman giving the election to a majority of States, that the President might be elected by two States only, Virga. & Penna. which have 18 members, if these States alone should be present

On a motion that the eventual election of Presidt. in case of *an equality* of the votes of the electors be referred to the House of Reps.

N. H. ay. Mas. ay. N. J. no. Pa. ay. Del. no. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. King moved to add to the amendment of Mr. Sherman "But a quorum for this purpose shall consist of a member or members from two thirds of the States," and also of a majority of the whole number of the House of Representatives."

Col: Mason liked it as obviating the remark of Mr. Madison—The motion as far as "States" inclusive was agd. to. On the residue to wit, "and also of a majority of the whole number of the House of Reps." it passed in the negative

N. H. no. Mas. ay. C^{t} ay. N. J. no. P^{a} ay. Del. no. M^{d} no. V^{a} ay. N. C. ay. S. C. no. Geo. no.

The Report relating to the appointment of the Executive stands as amended, as follows.

"He shall hold his office during the term of four years, and together with the vice-President, chosen for the same term, be elected in the following manner.

Each State shall appoint in such manner as its Legislature may direct, a number of electors equal to the whole number of Senators and members of the House of Representatives, to which the State may be entitled in the Legislature:

But no person shall be appointed an Elector who is a member of the Legislature of the U. S. or who holds any office of profit or trust under the U. S.

The Electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the Seat of the General Government, directed to the President of the Senate.

The President of the Senate shall in the presence of the Senate and House of Representatives open all the certificates & the votes shall then be counted.

The person having the greatest number of votes shall be the President (if such number be a majority of the whole number of electors appointed) and if

there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President, the Representation from each State having one vote. But if no person have a majority, then from the five highest on the list, the House of Representatives shall in like manner choose by ballot the President. In the choice of a President by the House of Representatives, a Quorum shall consist of a member or members from two thirds of the States, ([1] and the concurrence of a majority of all the States shall be necessary to such choice.)—And in every case after the choice of the President, the person having the greatest number of votes of the Electors shall be the vice-president: But, if there should remain two or more who have equal votes, the Senate shall choose from them the vice-President.[2]

[1] NOTE.—This clause was not inserted on this day, but on the 7th of Sepr—See Friday the 7th—Madison's note.

[2] September 6 Madison wrote to Jefferson (cipher represented by italics): " . . . As the Convention will shortly rise I should feel little scruple in disclosing what will be public here, before it could reach you, were it practicable for me to guard by Cypher against an intermediate discovery. But I am deprived of this resource by the shortness of the interval between the receipt of your letter of June 20 and the date of this. This is the first day which has been free from Committee service, both before & after the hours of the House, and the last that is allowed me by the time advertised for the sailing of the packet.

"The Convention consists now as it has generally done of Eleven States. There has been no intermission of its Sessions since a house was formed, except an interval of about ten days allowed a Committee appointed to detail the general propositions agreed on in the House. The term of its dissolution cannot be more than one or two weeks

The Legislature may determine the time of choosing the Electors, and of their giving their votes; and the manner of certifying and transmitting their votes

distant. A Govern^t will probably be submitted to the *people of* the *States*, consisting of a *President*, *cloathed* with *Executive power;* a *Senate chosen* by the *Legislatures*, and another *House chosen* by the *people of* the *States*, jointly *possessing* the *Legislative* power; and a regular *Judiciary* establishment. The mode of constituting the *Executive* is among the few points not yet finally settled. The *Senate* will consist of two *members* from each *State*, and *appointed sexennially*. The other, of *members*, *appointed biennially* by the *people of the States*, in proportion to their number. The Legislative power will *extend to taxation*, trade, and sundry other general matters. The powers of Congress will be *distributed*, according to their *nature*, *among the several departments*. The States will be *restricted from paper money* and in a *few other instances*. These are *the outlines*. The extent of them may perhaps surprize you. I hasard an opinion nevertheless that the *plan*, *should* it *be adopted*, will neither effectually *answer* its *national object*, nor prevent the local *mischiefs* which everywhere *excite disgusts* ag^st the *State Governments*. The grounds of this opinion will be the subject of a future letter.

"I have written to a friend in Cong^s intimating in a covert manner the necessity of deciding & notifying the intentions of Cong^s with regard to their foreign Ministers after May next, and have dropped a hint on the communications of Dumas.

"Congress have taken some measures for disposing of the public land, and have actually sold a considerable tract. Another bargain I learn is on foot for a further sale.

"Nothing can exceed the universal anxiety for the event of the meeting here. Reports and conjectures abound concerning the nature of the plan which is to be proposed. The public however is certainly in the dark with regard to it. The Convention is equally in the dark as to the reception wch may be given to it on its publication. All the prepossessions are on the right side, but it may well be expected that certain characters will wage war against any reform whatever. My own idea is that the public mind will now or in a very little time receive anything that promises stability to the public Councils & security to private rights, and that no regard ought to be had to local prejudices or temporary considerations. If the present moment be lost, it is hard to say what may be our fate.

"Our information from Virginia is far from being agreeable. In

—But the election shall be on the same day throughout the U. States."

Adjourned

FRIDAY SEP.R 7[1] 1787. IN CONVENTION

The mode of constituting the Executive being resumed, M.r Randolph moved, to insert in the first section of the report made yesterday

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many parts of the Country the drought has been extremely injurious to the Corn. I fear, tho' I have no certain information, that Orange & Albemarle share in the distress. The people also are said to be generally discontented. A paper emission is again a topic among them, so is an instalment of all debts in some places and the making property a tender in others. The taxes are another source of discontent. The weight of them is complained of, and the abuses in collecting them still more so. In several Counties the prisons & Court Houses & Clerks' offices have been wilfully burnt. In Green Briar the course of Justice has been mutinously stopped, and associations entered into ag.st the payment of taxes. No other County has yet followed the example. The approaching meeting of the Assembly will probably allay the discontents on one side by measures which will excite them on another.

"Mr. Wythe has never returned to us. His lady whose illness carried him away, died some time after he got home. The other deaths in Virg.a are Col. A. Cary and a few days ago, Mrs. Harrison, wife of Benj.n Harrison, Jun.r, & sister of J. F. Mercer. Wishing you all happiness

"I remain, Dear sir, Y.rs affect.ly

"Give my best wishes to Mazzei. I have rec.d his letter & book and will write by the next packet to him. Dorhman is still in V.a. Cong.s have done nothing for him in his affair. I am not sure that 9 St.s have been assembled of late. At present, it is doubtful whether there are seven."—Mad. MSS.

[1] The following letter was received on this day from Jonas Phillips, a Jew in Philadelphia.

"SIRES

"With leave and submission I address myself To those in whome

"The Legislature may declare by law what officer of the U. S. shall act as President in case of the death, resignation, or disability of the President and Vice-President; and such officer shall act accordingly until the time of electing a President shall arrive."

Mr Madison observed that this, as worded, would prevent a supply of the vacancy by an intermediate

there is wisdom understanding and knowledge. they are the honourable personages appointed and Made overseers of a part of the terrestrial globe of the Earth, Namely the 13 united states of america in Convention Assembled, the Lord preserve them amen—

"I the subscriber being one of the people called Jews of the City of Philadelphia, a people scattered and despersed among all nations do behold with Concern that among the laws in the Constitution of Pennsylvania their is a Clause Sect. 10 to viz—I do belive in one God the Creature and governour of the universe the Rewarder of the good and the punisher of the wicked—and I do acknowledge the scriptures of the old and New testement to be given by a devine inspiration—to swear and believe that the new testement was given by devine inspiration is absolutly against the Religious principle of a Jew. and is against his Conscience to take any such oath—By the above law a Jew is deprived of holding any publick office or place of Government which is a Contridectory to the bill of Right Sect 2. viz

"That all men have a natural and unalienable Right To worship almighty God according to the dectates of their own Conscience and understanding, and that no man aught or of Right can be compelled to attend any Religious Worship or Erect or support any place of worship or Maintain any minister contrary to or against his own free will and Consent nor Can any man who acknowledges the being of a God be Justly deprived or abridged of any Civil Right as a Citizen on account of his Religious sentiments or peculiar mode of Religious Worship, and that no authority Can or aught to be vested in or assumed by any power what ever that shall in any Case interfere or in any manner Controul the Right of Conscience in the free Exercise of Religious Worship—

"It is well known among all the Citizens of the 13 united States that the Jews have been true and faithfull whigs, and during the late Contest with England they have been foremost in aiding and assisting the States with their lifes and fortunes, they have supported the

election of the President, and moved to substitute—"until such disability be removed, or a President shall be elected.[1] M^r. Govr. Morris 2^ded the motion, which was agreed to.

It seemed to be an objection to the provision with some, that according to the process established for chusing the Executive, there would be difficulty in effecting it at other than the fixed periods; with others, that the Legislature was restrained in the temporary appointment to "*officers*" of the *U. S.*:

Cause, have bravely faught and bleed for liberty which they Can not Enjoy—

Therefore if the honourable Convention shall in ther Wisdom think fit and alter the said oath and leave out the words to viz—and I do acknowledge the scripture of the new testement to be given by devine inspiration then the Israeletes will think them self happy to live under a government where all Religious societys are on an Eaquel footing—I solecet this favour for my self my Childreen and posterity and for the benefit of all the Israeletes through the 13 united States of america

"My prayers is unto the Lord. May the people of this States Rise up as a great and young lion, May they prevail against their Enemies, May the degrees of honour of his Excellencey the president of the Convention George Washington, be Extollet and Raise up. May Every one speak of his glorious Exploits. May God prolong his days among us in this land of Liberty— May he lead the armies against his Enemys as he has done hereuntofore— May God Extend peace unto the united States—May they get up to the highest Prosperetys —May God Extend peace to them and their Seed after them so long as the Sun and moon Endureth—and may the almighty God of our father Abraham Isaac and Jacob endue this Noble Assembly with wisdom Judgement and unamity in their Councells, and may they have the Satisfaction to see that their present toil and labour for the wellfair of the united States may be approved of, Through all the world and perticular by the united States of america is the ardent prayer of Sires

"Your Most devoted obe^d. Servant

"JONAS PHILLIPS

"Philadelphia 24th Ellul 5547 or Sepr 7th 1787"—Const. MSS.

[1] In the printed Journal this amendment is put into the original motion.—Madison's note.

They wished it to be at liberty to appoint others than such.

On the Motion of Mr Randolph as amended, it passed in the affirmative

N. H. divided. Mas. no. Ct no. N. J. ay. Pa ay. Del. no. Md ay. Va ay. N. C. no. S. C. ay. Geo. ay.

Mr Gerry moved "that in the election of President by the House of Representatives, no State shall vote by less than three members, and where that number may not be allotted to a State, it shall be made up by its Senators; and a concurrence of a majority of all the States shall be necessary to make such choice." Without some such provision five individuals might possibly be competent to an election; these being a majority of two thirds of the existing number of States; and two thirds being a quorum for this business.

Mr Madison 2ded the motion

Mr Read observed that the States having but one member only in the House of Reps would be in danger of having no vote at all in the election: the sickness or absence either of the Representative or one of the Senators would have that effect.

Mr Madison replied that, if one member of the House of Representatives should be left capable of voting for the State, the states having one Representative only would still be subject to that danger. He thought it an evil that so small a number at any rate should be authorized to elect. Corruption would be greatly facilitated by it. The mode itself was

liable to this further weighty objection that the representatives of a *Minority* of the people, might reverse the choice of a *majority* of the *States* and of the *people*. He wished some cure for this inconveniency might yet be provided.

Mr. Gerry withdrew the first part of his motion; and on the, Question on the 2d part viz: "and a concurrence of a majority of all the States shall be necessary to make such choice" to follow the words "a member or members from two thirds of the States" —It was agreed to nem: con:

The section 2. (see Sepr. 4) requiring that the President should be a natural-born Citizen &c, & have been resident for fourteen years, & be thirty five years of age, was agreed to nem: con:

Section 3 (see Sepr. 4). "The vice President shall be ex-officio President of the Senate"

Mr. Gerry opposed this regulation. We might as well put the President himself at the head of the Legislature. The close intimacy that must subsist between the President & vice-president makes it absolutely improper. He was agst having any vice President.

Mr. Govr. Morris. The vice President then will be the first heir apparent that ever loved his father. If there should be no vice president, the President of the Senate would be temporary successor, which would amount to the same thing.

Mr. Sherman saw no danger in the case. If the vice-President were not to be President of the Senate, he would be without employment, and some

member by being made President must be deprived of his vote, unless when an equal division of votes might happen in the Senate, which would be but seldom.

Mr. Randolph concurred in the opposition to the clause.

Mr. Williamson, observed that such an officer as vice-President was not wanted. He was introduced only for the sake of a valuable mode of election which required two to be chosen at the same time.

Col: Mason, thought the office of vice-President an encroachment on the rights of the Senate; and that it mixed too much the Legislative & Executive, which as well as the Judiciary departments, ought to be kept as separate as possible. He took occasion to express his dislike of any reference whatever of the power to make appointments, to either branch of the Legislature. On the other hand he was averse to vest so dangerous a power in the President alone. As a method for avoiding both, he suggested that a privy Council of six members to the president should be established; to be chosen for six years by the Senate, two out of the Eastern two out of the middle, and two out of the Southern quarters of the Union, & to go out in rotation two every second year; the concurrence of the Senate to be required only in the appointment of Ambassadors, and in making treaties, which are more of a legislative nature. This would prevent the constant sitting of the Senate which he thought dangerous, as well as keep the departments separate & distinct.

It would also save the expence of constant sessions of the Senate. He had he said always considered the Senate as too unwieldy & expensive for appointing officers, especially the smallest, such as tide waiters &c. He had not reduced his idea to writing, but it could be easily done if it should be found acceptable.

On the question shall the vice President be ex officio President of the Senate? N. H. ay. Mas. ay. Ct. ay. N. J. no. Pa. ay. Del. ay. Mar. no. Va. ay. N. C. abst. S. C. ay. Geo. ay.

The other parts of the same Section (3) were then agreed to.

The Section 4.—to wit. "The President by & with the advice and consent of the Senate shall have power to make Treaties &c"

Mr. Wilson moved to add after the word "Senate" the words, "and House of Representatives." As treaties he said are to have the operation of laws, they ought to have the sanction of laws also. The circumstance of secrecy in the business of treaties formed the only objection; but this he thought, so far as it was inconsistent with obtaining the Legislative sanction, was outweighed by the necessity of the latter.

Mr. Sherman thought the only question that could be made was whether the power could be safely trusted to the Senate. He thought it could; and that the necessity of secrecy in the case of treaties forbade a reference of them to the whole Legislature.

Mr. Fitzimmons 2ded the motion of Mr. Wilson, &

on the question N. H. no. Mas. no. Ct. no. N. J. no. Pa. ay. Del. no. Md. no. Va. ay. N. C. no. S. C. no. Geo. no.

The first sentence as to making treaties was then Agreed to; nem: con:

"He shall nominate &c Appoint Ambassadors &c."

Mr. Wilson objected to the mode of appointing, as blending a branch of the Legislature with the Executive. Good laws are of no effect without a good Executive; and there can be no good Executive without a responsible appointment of officers to execute. Responsibility is in a manner destroyed by such an agency of the Senate. He would prefer the council proposed by Col: Mason, provided its advice should not be made obligatory on the President.

Mr. Pinkney was against joining the Senate in these appointments, except in the instances of Ambassadors who he thought ought not to be appointed by the President

Mr. Govr. Morris said that as the President was to nominate, there would be responsibility, and as the Senate was to concur, there would be security. As Congress now make appointments there is no responsibility.

Mr. Gerry. The idea of responsibility in the nomination to offices is Chimerical. The President cannot know all characters, and can therefore always plead ignorance.

Mr. King. As the idea of a Council proposed by

Col. Mason has been supported by Mr. Wilson, he would remark that most of the inconveniences charged on the Senate are incident to a Council of Advice. He differed from those who thought the Senate would sit constantly. He did not suppose it was meant that all the minute officers were to be appointed by the Senate, or any other original source, but by the higher officers of the departments to which they belong. He was of opinion also that the people would be alarmed at an unnecessary creation of new Corps which must increase the expence as well as influence of the Government.

On the question on these words in the clause viz —"He shall nominate & by & with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers (and consuls) Judges of the Supreme Court" Agreed to nem: con: the insertion of "and consuls" having first taken place.

On the question on the following words "And all other officers of U. S." N. H. ay. Mas. ay. Ct. ay. N. J. ay. Pa. no. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. no. Geo. ay.

On motion of Mr. Spaight—"that the President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting Commissions which shall expire at the end of the next Session of the Senate" It was agreed to nem: con:

Section 4. "The President by and with the advice and consent of the Senate shall have power to make Treaties,—*But no treaty shall be made without*

the consent of two thirds of the members present"— this last clause being before the House.

Mr. Wilson thought it objectionable to require the concurrence of $\frac{2}{3}$ which puts it into the power of a minority to controul the will of a majority.

Mr. King concurred in the objection; remarking that as the Executive was here joined in the business, there was a check which did not exist in Congress where the concurrence of $\frac{2}{3}$ was required.

Mr. Madison moved to insert after the word "treaty" the words "except treaties of peace" allowing these to be made with less difficulty than other treaties— It was agreed to nem: con:

Mr. Madison then moved to authorize a concurrence of two thirds of the Senate to make treaties of peace, without the concurrence of the President.— The President he said would necessarily derive so much power and importance from a state of war that he might be tempted if authorized, to impede a treaty of peace. Mr. Butler 2ded the motion

Mr. Gorham thought the precaution unnecessary as the means of carrying on the war would not be in the hands of the President, but of the Legislature.

Mr. Govr. Morris thought the power of the President in this case harmless; and that no peace ought to be made without the concurrence of the President, who was the general Guardian of the National interests.

Mr. Butler was strenuous for the motion, as a necessary security against ambitious & corrupt Presidents. He mentioned the late perfidious policy of the Statholder in Holland; and the artifices of the Duke of

Marlbro' to prolong the war of which he had the management.

Mr Gerry was of opinion that in treaties of peace a greater rather than less proportion of votes was necessary, than in other treaties. In Treaties of peace the dearest interests will be at stake, as the fisheries, territory &c. In treaties of peace also there is more danger to the extremities of the Continent of being sacrificed, than on any other occasions.

Mr Williamson thought that Treaties of peace should be guarded at least by requiring the same concurrence as in other Treaties.

On the motion of Mr Madison & Mr Butler

N. H. no. Mas. no. Ct no. N. J. no. Pa no. Del. no. Md ay. Va no. N. C. no. S. C. ay. Geo. ay.

On the part of the clause concerning treaties amended by the exception as to Treaties of peace,

N. H. ay. Mas. ay. Ct ay. N. J. no. Pa no. Del. ay. Md ay. Va ay. N. C. ay. S. C. ay. Geo. no.

"and may require the opinion in writing of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices," being before the House

Col: Mason[1] said that in rejecting a Council to the President we were about to try an experiment on which the most despotic Government had never ventured. The Grand Signor himself had his Divan.

[1] In the printed Journal, Mr Madison is erroneously substituted for Col: Mason.—Madison's note.

He moved to postpone the consideration of the clause in order to take up the following

"That it be an instruction to the Committee of the States to prepare a clause or clauses for establishing an Executive Council, as a Council of State for the President of the U. States, to consist of six members, two of which from the Eastern, two from the middle, and two from the Southern States, with a Rotation and duration of office similar to those of the Senate; such Council to be appointed by the Legislature or by the Senate."

Doctor Franklin 2^{ded} the motion. We seemed he said too much to fear cabals in appointments by a number, and to have too much confidence in those of single persons. Experience shewed that caprice, the intrigues of favorites & mistresses, were nevertheless the means most prevalent in monarchies. Among instances of abuse in such modes of appointment, he mentioned the many bad Governors appointed in G. B. for the Colonies. He thought a Council would not only be a check on a bad President but be a relief to a good one.

Mr Govr Morris. The question of a Council was considered in the Committee, where it was judged that the Presid^{t} by persuading his Council to concur in his wrong measures, would acquire their protection for them.

Mr Wilson approved of a Council in preference to making the Senate a party to appointm^{ts}

Mr Dickinson was for a Council. It w^{d} be a singular thing if the measures of the Executive were

not to undergo some previous discussion before the President.

Mr Madison was in favor of the instruction to the Committee proposed by Col: Mason.

The motion of Mr Mason was negatived. Mayd ay. S. C. ay. Geo. ay— N. H. no. Mas. no. Ct no. N. J. no Pa no. Del. no. Va no. N. C. no

On the question, "authorizing the President to call for the opinions of the Heads of Departments, in writing": it passed in the affirmative N. H. only being no.[1]

The clause was then unanimously agreed to—

Mr Williamson & Mr Spaight moved "that no Treaty of peace affecting Territorial rights shd be made without the concurrence of two thirds of the members of the Senate present.

Mr King. It will be necessary to look out for securities for some other rights, if this principle be established; he moved to extend the motion—"to all present rights of the U. States."

Adjourned.

SATURDAY SEPTEMBER 8TH IN CONVENTION

The last Report of the Committee of Eleven (see Sepr 4) was resumed.

Mr King moved to strike out the "exception of

[1] Not so stated in the printed Journal; but conformable to the result afterwards appearing.—Madison's note.

Treaties of peace" from the general clause requiring two thirds of the Senate for making Treaties

Mr. Wilson wished the requisition of two thirds to be struck out altogether If the majority cannot be trusted, it was a proof, as observed by Mr. Ghorum, that we were not fit for one Society.

A reconsideration of the whole clause was agreed to.

Mr. Govr. Morris was agst. striking out the "exception of Treaties of peace" If two thirds of the Senate should be required for peace, the Legislature will be unwilling to make war for that reason, on account of the Fisheries or the Mississippi, the two great objects of the Union. Besides, if a majority of the Senate be for peace, and are not allowed to make it, they will be apt to effect their purpose in the more disagreeable mode, of negativing the supplies for the war.

Mr. Williamson remarked that Treaties are to be made in the branch of the Govt. where there may be a majority of the States without a majority of the people. Eight men may be a majority of a quorum, & should not have the power to decide the conditions of peace. There would be no danger, that the exposed States, as S. Carolina or Georgia, would urge an improper war for the Western Territory.

Mr. Wilson If two thirds are necessary to make peace, the minority may perpetuate war, against the sense of the majority.

Mr. Gerry enlarged on the danger of putting the essential rights of the Union in the hands of so small

a number as a majority of the Senate, representing perhaps, not one fifth of the people. The Senate will be corrupted by foreign influence.

Mr Sherman was ag^st^ leaving the rights established by the Treaty of peace, to the Senate, & moved to annex a proviso that no such rights sh^d^ be ceded without the sanction of the Legislature.

Mr Govr Morris seconded the ideas of Mr Sherman.

Mr Madison observed that it had been too easy in the present Congress, to make Treaties altho' nine States were required for the purpose.

On the question for striking "except Treaties of peace"

N. H. ay. Mass. ay. C^t^ ay. N. J. no. P^a^ ay. Del. no. M^d^ no. V^a^ ay. N. C. ay. S. C. ay. Geo. ay

Mr Wilson & Mr Dayton move to strike out the clause requiring two thirds of the Senate for making Treaties; on which,

N. H. no. Mas. no. C^t^ div^d^ N. J. no. P^a^ no. Del. ay. M^d^ no. V^a^ no. N. C. no. S. C. no. Geo. no.

Mr Rutlidge & Mr Gerry moved that "no Treaty be made without the consent of $\frac{2}{3}$ of all the members of the Senate"—according to the example in the present Cong^s^

Mr Ghorum. There is a difference in the case, as the President's consent will also be necessary in the new Gov^t^

On the question

N. H. no. Mass. no. (Mr Gerry ay) C^t^ no. N. J.

no. Pa no. Del. no. Md no. Va no. N. C. ay. S. C. ay. Geo. ay.

Mr Sherman movd that no Treaty be made without a Majority of the whole number of the Senate. Mr Gerry seconded him.

Mr Williamson. This will be less security than ⅔ as now required.

Mr Sherman. It will be less embarrassing.

On the question, it passed in the negative.

N. H. no. Mass. ay. Ct ay. N. J. no. Pa no. Del. ay. Md no. Va no. N. C. no. S. C. ay. Geo. ay.

Mr Madison moved that a Quorum of the Senate consist of ⅔ of all the members.

Mr Govr Morris—This will put it in the power of one man to break up a Quorum.

Mr Madison. This may happen to any Quorum.

On the Question it passed in the negative

N. H. no. Mass. no. Ct no. N. J. no. Pa no. Del. no. Md ay. Va ay. N. C. ay. S. C. ay. Geo. ay.

Mr Williamson & Mr Gerry movd "that no Treaty shd be made witht previous notice to the members, & a reasonable time for their attending."

On the Question

All the States no; except N. C. S. C. & Geo. ay.

On a question on clause of the Report of the Comte of Eleven relating to Treaties by ⅔ of the Senate. All the States were ay—except Pa N. J. & Geo. no.

Mr Gerry movd that "no officer be appd but to offices created by the Constitution or by law."—

This was rejected as unnecessary by six no's & five ays:

The Ayes. Mass. Ct. N. J. N. C. Geo.—Noes. N. H. Pa. Del. Md. Va. S. C.

The clause referring to the Senate, the trial of impeachments agst the President, for Treason & bribery, was taken up.

Col. Mason. Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined. As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend the power of impeachments. He movd to add, after "bribery" "or maladministration." Mr Gerry seconded him.

Mr Madison so vague a term will be equivalent to a tenure during pleasure of the Senate.

Mr Govr Morris, it will not be put in force & can do no harm. An election of every four years will prevent maladministration.

Col. Mason withdrew "maladministration" & substitutes "other high crimes & misdemesnors agst the State"

On the question thus altered

N. H. ay. Mass. ay. Ct. ay. N. J. no. Pa. no. Del. no. Md. ay. Va. ay. N. C. ay. S. C. ay.[1] Geo. ay.

Mr Madison objected to a trial of the President by the Senate, especially as he was to be impeached by

[1] In the printed Journal, S. Carolina, no.—Madison's note.

the other branch of the Legislature, and for any act which might be called a misdemesnor. The President under these circumstances was made improperly dependent. He would prefer the Supreme Court for the trial of impeachments, or rather a tribunal of which that should form a part.

Mr. Govr. Morris thought no other tribunal than the Senate could be trusted. The supreme Court were too few in number and might be warped or corrupted. He was agst. a dependence of the Executive on the Legislature, considering the Legislative tyranny the great danger to be apprehended; but there could be no danger that the Senate would say untruly on their oaths that the President was guilty of crimes or facts, especially as in four years he can be turned out.

Mr. Pinkney disapproved of making the Senate the Court of impeachments, as rendering the President too dependent on the Legislature. If he opposes a favorite law, the two Houses will combine agst. him, and under the influence of heat and faction throw him out of office.

Mr. Williamson thought there was more danger of too much lenity than of too much rigour towards the President, considering the number of cases in which the Senate was associated with the President.

Mr. Sherman regarded the Supreme Court as improper to try the President, because the Judges would be appointed by him.

On motion of Mr. Madison to strike out the words —"by the Senate" after the word "conviction"

N. H. no. Mas. no. Ct. no. N. J. no. Pa. ay. Del. no. Md. no. Va. ay. N. C. no. S. C. no. Geo. no.

In the amendment of Col: Mason just agreed to, the word "State" after the words "misdemeanors against," was struck out, and the words "United States," inserted unanimously, in order to remove ambiguity.

On the question to agree to clause as amended,

N. H. ay. Mas. ay. Cont ay N J ay. Pa. no. Del ay Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

On motion "The vice-President and other Civil officers of the U. S. shall be removed from office on impeachment and conviction as aforesaid" was added to the clause on the subject of impeachments.

The clause of the report made on the 5th Sept. & postponed was taken up to wit—"All bills for raising revenue shall originate in the House of Representatives; and shall be subject to alterations and amendments by the Senate. No money shall be drawn from the Treasury but in consequence of appropriations made by law."

It was moved to strike out the words "and shall be subject to alterations and amendments by the Senate" and insert the words used in the Constitution of Massachusetts on the same subject—"but the Senate may propose or concur with amendments as in other bills" which was agreed too nem: con:

On the question On the first part of the clause—"All bills for raising revenue shall originate in the House of Representatives" [1]

[1] This was a conciliatory vote, the effect of the compromise formerly alluded to. See Note Wednesday Sept. 5.—Madison's note.

N. H. ay. Mas. ay. C[t] ay. N. J. ay. P[a] ay. Del. no. M[d] no. V[a] ay. N. C. ay S. C. ay. Geo. ay.

M[r] Gov[r] Morris moved to add to clause (3) of the report made on Sep[r] 4. the words "and every member shall be on oath" which being agreed to, and a question taken on the clause so amended viz —"The Senate of the U. S. shall have power to try all impeachments: but no person shall be convicted without the concurrence of two thirds of the members present: and every member shall be on oath"

N. H. ay. Mas. ay. C[t] ay. N. J. ay. P[a] no. Del— ay. M[d] ay. V[a] no. N. C. ay. S. C. ay. Geo. ay.

M[r] Gerry repeated his motion above made on this day, in the form following: "The Legislature shall have the sole right of establishing offices not heretofore provided for" which was again negatived: Mas. Con[t] & Geo. only being ay.

M[r] M[c]Henry observed that the President had not yet been any where authorized to convene the Senate, and moved to amend Art X. sect. 2. by striking out the words "he may convene them (the Legislature) on extraordinary occasions," & insert, "He may convene both or either of the Houses on extraordinary occasions." This he added would also provide for the case of the Senate being in Session, at the time of convening the Legislature.

M[r] Wilson said he should vote ag[st] the motion, because it implied that the senate might be in Ses-

sion, when the Legislature was not, which he thought improper.

On the question

N. H. ay. Mas. no. C^{t} ay. N. J. ay. P^{a} no. Del. ay. M^{d} ay. V^{a} no. N. C. ay. S. C. no. Geo. ay.

A Committee was then appointed by Ballot to revise the stile of and arrange the articles which had been agreed to by the House. The committee consisted of Mr Johnson, Mr Hamilton, Mr Govr Morris, Mr Madison and Mr King.

Mr Williamson moved that, previous to this work of the Committee the clause relating to the number of the House of Representatives sh^{d} be reconsidered for the purpose of increasing the number.

Mr Madison 2^{ded} the Motion

Mr Sherman opposed it he thought the provision on that subject amply sufficient.

Col: Hamilton expressed himself with great earnestness and anxiety in favor of the motion. He avowed himself a friend to a vigorous Government, but would declare at the same time, that he held it essential that the popular branch of it should be on a broad foundation. He was Seriously of opinion that the House of Representatives was on so narrow a scale as to be really dangerous, and to warrant a jealousy in the people for their liberties. He remarked that the connection between the President & Senate would tend to perpetuate him, by corrupt influence. It was the more necessary on this account that a numerous representation in the other branch of the Legislature should be established.

On the motion of Mr. Williamson to reconsider, it was negatived [1]

N. H. no. Mas. no. Ct. no. N. J. no. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. no.

Adjd.

MONDAY SEPR. 10. 1787 IN CONVENTION [2]

Mr. Gerry moved to reconsider Art XIX. viz. "On the application of the Legislatures of two thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the U. S. shall call a Convention for that purpose," (see Aug 6)

This constitution he said is to be paramount to the State Constitutions. It follows hence, from this article that two thirds of the States may obtain a Convention, a majority of which can bind the Union to innovations that may subvert the State Constitutions altogether. He asked whether this was a situation proper to be run into.

Mr. Hamilton 2ded the motion, but he said with a different view from Mr. Gerry. He did not object

[1] This motion & vote are entered on the Printed journal of the ensuing morning.—Madison's note.

[2] "There is said to be a disposition generally prevalent thro' this state to comply with ye plan of ye convention without much scrutiny, Hervey, who has been in Albermarle lately, says yt Nicholas is determined to support it however contrary it may be to his own opinions. I am persuaded that those who sacrifice solid and permanent advantages in this plan, to their idea of the transitory disposition of the people, will condemn themselves hereafter."—James McClurg to Madison, September 10, 1787.—Mad. MSS.

to the consequences stated by Mr Gerry. There was no greater evil in subjecting the people of the U. S. to the major voice than the people of a particular State. It had been wished by many and was much to have been desired that an easier mode of introducing amendments had been provided by the articles of the Confederation. It was equally desirable now that an easy mode should be established for supplying defects which will probably appear in the new System. The mode proposed was not adequate. The State Legislatures will not apply for alterations but with a view to increase their own powers. The National Legislature will be the first to perceive and will be most sensible to the necessity of amendments, and ought also to be empowered, whenever two thirds of each branch should concur to call a Convention. There could be no danger in giving this power, as the people would finally decide in the case.

Mr Madison remarked on the vagueness of the terms, "call a Convention for the purpose," as sufficient reason for reconsidering the article. How was a Convention to be formed? by what rule decide? what the force of its acts?

On the motion of Mr Gerry to reconsider

N. H. divd Mas. ay. Ct ay. N. J. no. Pa ay. Del. ay. Md ay. Va ay. N. C. ay. S. C. ay. Geo. ay.

Mr Sherman moved to add to the article "or the Legislature may propose amendments to the several States for their approbation, but no amendments

[illegible] Legislatures, to the end that they may [illegible] conventions; each Legislature de- [illegible] the Convention of the State should [illegible] ought to take effect among nine rati- [illegible] the same sh^d take effect accordingly.

[illegible] Some States will say that nine States [illegible] sufficient to establish the plan, others will [illegible] unanimity for the purpose. And the differ- [illegible] conditional ratifications will defeat the plan [illegible]

[illegible] No Convention convinced of the [illegible] the plan will refuse to give it effect on [illegible] nine States. He thought this mode [illegible] than the one proposed in the [illegible] would attain the same end.

[illegible] remarked that the words "for [illegible] had been struck out in order to [illegible] the necessity of an Act incon- [illegible] Articles of Confederation under [illegible] their authority.

[illegible] declared, if no change should be [illegible] of the plan, he should be obliged [illegible] the whole of it. He had from the [illegible] been convinced that radical [illegible] system of the Union were necessary. [illegible] conviction he had brought forward a set [illegible] propositions as the basis and outline [illegible] These Republican propositions had [illegible] to his regret, been widely, and, in [illegible] reconcileably departed from. In this [illegible] it was his idea and he accordingly

this objection, these words were added to the proposition:[1] "provided that no amendments which may be made prior to the year 1808 shall in any manner affect the 4 & 5 sections of the VII article" —The postponement being agreed to,

On the question on the proposition of Mr Madison & Mr Hamilton as amended

N. H. div^d Mas. ay. C^t ay. N. J. ay. P^a ay. Del. no. M^d ay. V^a ay. N. C. ay. S. C. ay. Geo. ay.

Mr Gerry moved to reconsider Art: XXI and XXII. from the latter of which "for the approbation of Cong^s" had been struck out. He objected to proceeding to change the Government without the approbation of Congress, as being improper and giving just umbrage to that body: He repeated his objections also to an annulment of the confederation with so little scruple or formality.

Mr Hamilton concurred with Mr Gerry as to the indecorum of not requiring the approbation of Congress. He considered this as a necessary ingredient in the transaction. He thought it wrong also to allow nine States as provided by Art XXI. to institute a new Government on the ruins of the existing one. He w^d propose as a better modification of the two articles (XXI & XXII) that the plan should be sent to Congress in order that the same if approved by them, may be communicated to

[1] The Printed Journal makes the succeeding proviso as to sections 4 & 5, of the art: VII moved by Mr Rutlidge, part of the proposition of Mr Madison.—Madison's note.

the State Legislatures, to the end that they may refer it to State conventions; each Legislature declaring that if the Convention of the State should think the plan ought to take effect among nine ratifying States, the same sh^{d} take effect accordingly.

Mr Gorham. Some States will say that nine States shall be sufficient to establish the plan, others will require unanimity for the purpose. And the different and conditional ratifications will defeat the plan altogether.

Mr Hamilton. No Convention convinced of the necessity of the plan will refuse to give it effect on the adoption by nine States. He thought this mode less exceptionable than the one proposed in the article, while it would attain the same end.

Mr Fitzimmons remarked that the words "for their approbation" had been struck out in order to save Congress from the necessity of an Act inconsistent with the Articles of Confederation under which they held their authority.

Mr Randolph declared, if no change should be made in this part of the plan, he should be obliged to dissent from the whole of it. He had from the beginning he said been convinced that radical changes in the system of the Union were necessary. Under this conviction he had brought forward a set of republican propositions as the basis and outline of a reform. These Republican propositions had however, much to his regret, been widely, and, in his opinion, irreconcileably departed from. In this state of things it was his idea and he accordingly

meant to propose, that the State Conventions sh^{d} be at liberty to offer amendments to the plan; and that these should be submitted to a second General Convention, with full power to settle the Constitution finally. He did not expect to succeed in this proposition, but the discharge of his duty in making the attempt, would give quiet to his own mind.

Mr Wilson was against a reconsideration for any of the purposes which had been mentioned.

Mr King thought it would be more respectful to Congress to submit the plan generally to them; than in such a form as expressly and necessarily to require their approbation or disapprobation. The assent of nine States he considered as sufficient; and that it was more proper to make this a part of the Constitution itself, than to provide for it by a supplemental or distinct recommendation.

Mr Gerry urged the indecency and pernicious tendency of dissolving in so slight a manner, the solemn obligations of the articles of confederation. If nine out of thirteen can dissolve the compact. Six out of nine will be just as able to dissolve the new one hereafter.

Mr Sherman was in favor of Mr King's idea of submitting the plan generally to Congress. He thought nine States ought to be made sufficient: but that it would be best to make it a separate act and in some such form as that intimated by Col: Hamilton, than to make it a particular article of the Constitution.

On the question for reconsidering the two articles, XXI & XXII—

N. H. div^{d} Mas. no. C^{t} ay. N. J. ay. P^{a} no. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. no. Geo. ay.

Mr Hamilton then moved to postpone art XXI in order to take up the following, containing the ideas he had above expressed, viz

Resolved that the foregoing plan of a Constitution be transmitted to the U. S. in Congress assembled, in order that if the same shall be agreed to by them, it may be communicated to the Legislatures of the several States, to the end that they may provide for its final ratification by referring the same to the Consideration of a Convention of Deputies in each State to be chosen by the people thereof, and that it be recommended to the said Legislatures in their respective acts for organizing such convention to declare, that if the said Convention shall approve of the said Constitution, such approbation shall be binding and conclusive upon the State, and further that if the said Convention should be of opinion that the same upon the assent of any nine States thereto, ought to take effect between the States so assenting, such opinion shall thereupon be also binding upon such a State, and the said Constitution shall take effect between the States assenting thereto

Mr Gerry 2^{ded} the motion.

Mr Wilson. This motion being seconded, it is necessary now to speak freely. He expressed in strong terms his disapprobation of the expedient proposed, particularly the suspending the plan of the Convention on the approbation of Congress. He

declared it to be worse than folly to rely on the concurrence of the Rhode Island members of Cong[s] in the plan. Maryland has voted on this floor; for requiring the unanimous assent of the 13 States to the proposed change in the federal System. N. York has not been represented for a long time past in the Convention. Many individual deputies from other States have spoken much against the plan. Under these circumstances can it be safe to make the assent of Congress necessary. After spending four or five months in the laborious & arduous task of forming a Government for our Country, we are ourselves at the close throwing insuperable obstacles in the way of its success.

M[r] Clymer thought that the mode proposed by M[r] Hamilton would fetter & embarrass Cong[s] as much as the original one, since it equally involved a breach of the articles of Confederation

M[r] King concurred with M[r] Clymer. If Congress can accede to one mode, they can to the other. If the approbation of Congress be made necessary, and they should not approve, the State Legislatures will not propose the plan to Conventions; or if the States themselves are to provide that nine States shall suffice to establish the System, that provision will be omitted, every thing will go into confusion, and all our labor be lost.

M[r] Rutlidge viewed the matter in the same light with M[r] King.

On the question to postpone in order to take up Col: Hamilton's motion

N. H. no. Mas. no. C^{t} ay. N. J. no. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. no. Geo. no.

A Question being then taken on the article XXI. It was agreed to unanimously.

Col: Hamilton withdrew the remainder of the motion to postpone art XXII, observing that his purpose was defeated by the vote just given.

Mr Williamson & Mr Gerry moved to re-instate the words "for the approbation of Congress" in Art: XXII. which was disagreed to nem: con:

Mr Randolph took this opportunity to state his objections to the System. They turned on the Senate's being made the Court of Impeachment for trying the Executive—on the necessity of $\frac{3}{4}$ instead of $\frac{2}{3}$ of each house to overrule the negative of the President—on the smallness of the number of the Representative branch,—on the want of limitation to a standing army—on the general clause concerning necessary and proper laws—on the want of some particular restraint on navigation acts—on the power to lay duties on exports—on the authority of the General Legislature to interpose on the application of the *Executives* of the States—on the want of a more definite boundary between the General & State Legislatures—and between the General and State Judiciaries—on the unqualified power of the President to pardon treasons—on the want of some limit to the power of the Legislature in regulating their own compensations. With these difficulties in his mind, what course he asked was he to pursue?

Was he to promote the establishment of a plan which he verily believed would end in Tyranny? He was unwilling he said to impede the wishes and Judgment of the Convention, but he must keep himself free, in case he should be honored with a seat in the Convention of his State, to act according to the dictates of his judgment. The only mode in which his embarrassments could be removed, was that of submitting the plan to Cong[s] to go from them to the State Legislatures, and from these to State Conventions having power to adopt reject or amend; the process to close with another General Convention with full power to adopt or reject the alterations proposed by the State Conventions, and to establish finally the Government. He accordingly proposed a Resolution to this effect.

Doc[r] Franklin 2[ded] the motion

Col: Mason urged & obtained that the motion should lie on the table for a day or two to see what steps might be taken with regard to the parts of the system objected to by M[r] Randolph.

M[r] Pinkney moved "that it be an instruction to the Committee for revising the stile and arrangement of the articles agreed on, to prepare an address to the people, to accompany the present Constitution, and to be laid with the same before the U. States in Congress"

[1] The motion itself was referred to the Committee nem: con:

[1] These motions are not entered in the printed Journal.—Madison's note.

[1] Mr. Randolph moved to refer to the Committee also a motion relating to pardons in cases of Treason —which was agreed to nem: con:

Adjourned

TUESDAY SEPr. 11. 1787. IN CONVENTION

The Report of the Comittee of stile & arrangement not being made & being waited for,

The House Adjourned

WEDNESDAY SEPr. 12. 1787. IN CONVENTION

Docr. Johnson from the Committee of stile &c. reported a digest of the plan, of which printed copies were ordered to be furnished to the members. He also reported a letter to accompany the plan, to Congress.[2]

[1] These motions are not entered in the printed Journal.—Madison's note.

[2] A note by Madison in the text says: "(here insert a transcript of the former from the annexed sheet as *printed* and of the latter from the draft as finally agreed to,)" and his footnote says: "This is a literal copy of the printed Report. The Copy in the printed Journal contains some of the alterations subsequently made in the House." No transcript of the report was, however, made by Madison, but the printed copy is among his papers. It is a large folio of four pages printed on one side of each page, and is accurately reproduced here. Madison's copy is marked by him: "as reported by Come of revision, or stile and arrangement Sepr 12." The report is, in fact, correctly printed in the *Journal of the Federal Convention*, 351, *et seq.*, Madison's statement to the contrary being an error. General Bloomfield furnished Brearley's copy to John Quincy Adams, and he printed it without the alterations and amendments which Brearley had made. The extent of Brearley's alterations and amendments may be seen in the copy printed in the *Documentary History of the Constitution*, i., 362, *et seq.*

WE, THE PEOPLE OF THE UNITED STATES, IN ORDER TO FORM a more perfect union, to establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Sect. 1. ALL legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sect. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to servitude for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every forty thousand, but each state shall have at least one representative: and until such enumeration shall be made, the state of New-Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York,

six, New-Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North-Carolina five, South-Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and they shall have the sole power of impeachment.

Sect. 3. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years: and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided [1] as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year: and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any state, the Executive thereof may make temporary appointments until the next meeting of the Legislature.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice-President of the United States shall be, ex officio,[2] President of the senate, but shall have no vote, unless they be equally divided.

[1] The words, "by lot," were not in the Report as printed; but were inserted in manuscript, as a typographical error, departing from the text of the Report referred to the Committee of style & arrangement.—Marginal note by Madison.

[2] Ex officio struck out in Madison's copy.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Sect. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof: but the Congress may at any time by law make or alter such regulations.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sect. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business: but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings; punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Sect. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been encreased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Sect. 7. The enacting stile of the laws shall be, "Be it enacted by the senators and representatives in Congress assembled."

All bills for raising revenue shall originate in the house of representatives: but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States. If he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all

such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by [1] three-fourths [2] of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sect. 8. The Congress may by joint ballot appoint a treasurer. They shall have power

To lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defence and general welfare of the United States.[3]

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, among the several states, and with the Indian tribes.

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

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[1] In the entry of this Report in the printed Journal "two-thirds" are substituted for "three-fourths." This change was made after the Report was received.—Madison's note. This is a mistake. The printed Journal has it "three fourths."

[2] A marginal note says "two thirds."

[3] "but all duties imposts & excises shall be uniform throughout the U. States," interlined by Madison.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the supreme court.

To define and punish piracies and felonies committed on the high seas, and [1] offences against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies: but no appropriations of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions.

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other

[1] (punish) a typographical omission.—Madison's note.

powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Sect. 9. The migration or importation of such persons as the several states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder shall be passed, nor any ex post facto law.

No capitation tax shall be laid, unless in proportion to the census herein before directed to be taken.[1]

No tax or duty shall be laid on articles exported from any State.

No money shall be drawn from the treasury, but in consequence of appropriations made by law.

No title of nobility shall be granted by the United States. And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Sect. 10. No state shall coin money, nor emit bills of credit, nor make any thing but gold or silver coin a tender in payment of debts, nor pass any bill of attainder, nor ex post facto laws, nor laws altering or impairing the obligation of contracts; nor grant letters of marque and reprisal, nor enter into any treaty, alliance, or confederation, nor grant any title of nobility.

No state shall, without the consent of Congress, lay imposts or duties on imports or exports, nor with such consent,

[1] "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another—nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another," interlined by Madison.

but to the use of the treasury of the United States.[1] [2] Nor keep troops nor ships of war in time of peace, nor enter into any agreement or compact with another state, nor with any foreign power. Nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so iminent, as not to admit of delay until the Congress can be consulted.

II.

Sect. 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, altogether with the vice-president, chosen for the same term, be elected in the following manner:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in Congress: but no senator or representative shall be appointed an elector, nor any person holding an office of trust or profit under the United States.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the general government, directed to the president of the senate. The president of the senate shall in the presence of the senate and house of representatives open all the certificates, and the votes shall then

[1] provided that no State shall be restrained from imposing the usual duties on produce exported from such State for the sole purpose of defraying the charges of inspecting packing storing & indemnifying the losses on such produce while in the custody of public officers. But all such regulations shall in case of abuse be subject to the revision & controul of Congress.—Marginal note by Madison.

[2] "No State shall without the consent of Congress," interlined by Madison.

be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately chuse by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states and not per capita,[1] the representation from each state having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president by the representatives,[2] the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.

The Congress may determine the time of chusing the electors, and the time in [3] which they shall give their votes; but the election shall be on the same day [4] throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the

[1] "and not per capita" struck out by Madison.

[2] "by the representatives" struck out by Madison.

[3] The words "day on" substituted by Madison.

[4] "but the election shall be on the same day" struck out & "which day shall be the same" inserted by Madison.

vice-president, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or the period for chusing another president arrive.[1]

The president shall, at stated times, receive a fixed compensation for his services, which shall neither be encreased nor diminished during the period for which he shall have been elected.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I ——, do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my judgment and power, preserve, protect and defend the constitution of the United States."

Sect. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several States: he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, when called into the actual service of the United States,[2] and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States,

[1] "the period for chusing another president arrive" struck out and "a president be chosen" inserted by Madison.

[2] It so appears in the printed copy, but the clause "when called into the actual service of the United States" was intended to follow immediately after "militia of the several States."

whose appointments are not herein otherwise provided for.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

Sect. 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient: he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper: he shall receive ambassadors and other public ministers: he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sect. 4. The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

III.

Sect. 1. The judicial power of the United States, both in law and equity, shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Sect. 2. The judicial power shall extend to all cases, both in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority. To all cases affecting ambassadors, other public ministers and consuls. To all cases of admiralty and maritime jurisdiction. To controversies to

which the United States shall be a party. To controversies between two or more States; between a state and citizens of another state; between citizens of different States; between citizens of the same state claiming lands under grants of different States, and between a state, or the citizens thereof, and foreign States, citizens or subjects.

In cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Sect. 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood nor forfeiture, except during the life of the person attainted.

IV.

Sect. 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Sect. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other

crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled be delivered up, and removed to the state having jurisdiction of the crime.

No person legally held to service or labour in one state, escaping into another, shall in consequence of regulations subsisting therein be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labour may be due.

Sect. 3. New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulatians respecting the territory or other property belonging to the United States: and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Sect. 4. The United States shall guarantee to every state in this union a Republican form of government, and shall protect each of them against invasion; and on application of the legislature or executive, against domestic violence.

V.

The Congress, whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds [1] of the legislatures [2] of the several states, shall propose amendments to this constitution, which shall be valid to all intents and purposes, as part thereof, when the same shall have been ratified by three-fourths at least of [3] the legislatures [4] of the

[1] "of two thirds" struck out by Madison.

[2] "of two-thirds" inserted by Madison.

[3] "three-fourths at least of" struck out by Madison.

[4] "of three-fourths" inserted by Madison.

several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year 1808 shall in any manner affect the —— [1] and [2] —— section [3] of [4] article

VI.

All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives beforementioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

VII.

The ratification of the conventions of nine States, shall be sufficient for the establishment of this constitution between the States so ratifying the same.

[1] "1 & 4 clauses in the 9" inserted by Madison.
[2] "and" struck out by Madison.
[3] Changed to "sections" by Madison.
[4] "the first" inserted by Madison.

LETTER.[1]

We have now the Honor to submit to the Consideration of the United States in Congress assembled that Constitution which has appeared to us the most advisable.

The Friends of our Country have long seen and desired that the Power of making War Peace and Treaties, that of levying Money & regulating Commerce and the correspondent executive and judicial Authorities should be fully and effectually vested in the general Government of the Union. But the Impropriety of delegating such extensive Trust to one Body of Men is evident. Hence results the Necessity of a different organization.

It is obviously impracticable in the fœderal Government of these States to secure all Rights of independent Sovereignty to each and yet provide for the Interest and Safety of all. Individuals entering into Society must give up a Share of Liberty to preserve the Rest. The Magnitude of the Sacrifice must depend as well on Situation and Circumstances as on the Object to be obtained. It is at all times difficult to draw with Precision the Line between those Rights which must be surrendered and those which may be reserved. And on the present Occasion this Difficulty was increased by a Difference among the several States as to their Situation Extent Habits and particular Interests.

In all our Deliberations on this Subject we kept steadily in

[1] The draft of the letter accompanied the draft of the Constitution, but was not printed with it. The Journal says (Sept. 12): "The draft of a letter to Congress being at the same time reported, was read once throughout; and afterwards agreed to by paragraphs." (*Const. MSS. and Journal*, p. 367.) The draft is in the handwriting of Gouverneur Morris and was undoubtedly prepared by him. It was turned over to Washington by Jackson with the other papers of the convention. The draft of the Constitution must have been among those papers he destroyed. Probably it too was written by Morris. The letter having been accepted September 12, was printed with the final Constitution September 17. It does not appear to have caused debate.

our View that which appears to us the greatest Interest of every true American The Consolidation of our Union in which is involved our Prosperity Felicity Safety perhaps our national Existence. This important Consideration seriously and deeply impressed on our Minds led each State in the Convention to be less rigid in Points of inferior Magnitude than might have been otherwise expected. And thus the Constitution which we now present is the Result of a Spirit of Amity and of that mutual Deference & Concession which the Peculiarity of our political Situation rendered indispensable.

That it will meet the full and entire approbation of every State is not perhaps to be expected. But each will doubtless consider that had her Interests been alone consulted the Consequences might have been particularly disagreable or injurious to others. That it is liable to as few Exceptions as could reasonably have been expected we hope and believe That it may promote the lasting Welfare of that Country so dear to us all and secure her Freedom and Happiness is our most ardent Wish—

Mr Williamson moved to reconsider the clause requiring three fourths of each House to overrule the negative of the President, in order to strike out $^3/_4$ and insert $^2/_3$. He had he remarked himself proposed $^3/_4$ instead of $^2/_3$, but he had since been convinced that the latter proportion was the best. The former puts too much in the power of the President.

Mr Sherman was of the same opinion; adding that the States would not like to see so small a minority and the President, prevailing over the general voice. In making laws regard should be had to the sense of the people, who are to be bound by them, and it was more probable that a single man should mistake or betray this sense than the Legislature.

Mr Govr Morris. Considering the difference between the two proportions numerically, it amounts in one House to two members only; and in the others to not more than five; according to the numbers of which the Legislature is at first to be composed. It is the interest moreover of the distant States to prefer $^3/_4$ as they will be oftenest absent and need the interposing check of the President. The excess rather than the deficiency, of laws was to be dreaded. The example of N. York shews that $^2/_3$ is not sufficient to answer the purpose.

Mr Hamilton added his testimony to the fact that $^2/_3$ in N. York had been ineffectual either where a popular object, or a legislative faction operated; of which he mentioned some instances.

Mr Gerry. It is necessary to consider the danger on the other side also. $^2/_3$ will be a considerable, perhaps a proper security. $^3/_4$ puts too much in the power of a few men. The primary object of the revisionary check in the President is not to protect the general interest, but to defend his own department. If $^3/_4$ be required, a few Senators having hopes from the nomination of the President to offices, will combine with him and impede proper laws. Making the vice-President Speaker increases the danger.

Mr Williamson was less afraid of too few than of too many laws. He was most of all afraid that the repeal of bad laws might be rendered too difficult by requiring $^3/_4$ to overcome the dissent of the President.

Col: Mason had always considered this as one of the most exceptionable parts of the System. As to

the numerical argument of Mr Govr Morris, little arithmetic was necessary to understand that $^3/_4$ was more than $^2/_3$, whatever the numbers of the Legislature might be. The example of New York depended on the real merits of the laws. The Gentlemen citing it, had no doubt given their own opinions. But perhaps there were others of opposite opinions who could equally paint the abuses on the other side. His leading view was to guard against too great an impediment to the repeal of laws.

Mr Govr Morris dwelt on the danger to the public interest from the instability of laws, as the most to be guarded against. On the other side there could be little danger. If one man in office will not consent where he ought, every fourth year another can be substituted. This term was not too long for fair experiments. Many good laws are not tried long enough to prove their merit. This is often the case with new laws opposed to old habits. The Inspection laws of Virginia & Maryland to which all are now so much attached were unpopular at first.

Mr Pinkney was warmly in opposition to $^3/_4$ as putting a dangerous power in the hands of a few Senators headed by the President.

Mr Madison. When $^3/_4$ was agreed to, the President was to be elected by the legislature and for seven years. He is now to be elected by the people and for four years. The object of the revisionary power is two fold. 1. to defend the Executive rights 2. to prevent popular or factious injustice. It was

an important principle in this & in the State Constitutions to check legislative injustice and encroachments. The Experience of the States had demonstrated that their checks are insufficient. We must compare the danger from the weakness of $^{2}/_{3}$ with the danger from the strength of $^{3}/_{4}$. He thought on the whole the former was the greater. As to the difficulty of repeals it was probable that in doubtful cases the policy would soon take place of limiting the duration of laws so as to require renewal instead of repeal.

The reconsideration being agreed to. On the question to insert $^{2}/_{3}$ in place of $^{3}/_{4}$.

N. H. div^{d} Mas. no. C^{t} ay. N. J. ay. P^{a} no. Del. no. M^{d} ay. M^{r} McHenry no. V^{a} no. Genl Washington Mr Blair, Mr Madison no. Col. Mason, Mr Randolph ay. N. C. ay. S. C. ay. Geo. ay.

Mr Williamson, observed to the House that no provision was yet made for juries in Civil cases and suggested the necessity of it.

Mr Gorham. It is not possible to discriminate equity cases from those in which juries are proper. The Representatives of the people may be safely trusted in this matter.

Mr Gerry urged the necessity of Juries to guard agst corrupt Judges. He proposed that the Committee last appointed should be directed to provide a clause for securing the trial by Juries.

Col: Mason perceived the difficulty mentioned by Mr Gorham. The jury cases cannot be specified. A general principle laid down on this and some other

points would be sufficient. He wished the plan had been prefaced with a Bill of Rights, & would second a Motion if made for the purpose. It would give great quiet to the people; and with the aid of the State declarations, a bill might be prepared in a few hours.

Mr Gerry concurred in the idea & moved for a Committee to prepare a Bill of Rights. Col: Mason 2ded the motion.

Mr Sherman, was for securing the rights of the people where requisite. The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient. There are many cases where juries are proper which cannot be discriminated. The Legislature may be safely trusted.

Col: Mason. The laws of the U. S. are to be paramount to State Bills of Rights. On the question for a Comte to prepare a Bill of Rights

N. H. no. Mas. abst Ct no. N. J. no. Pa no. Del. no. Md no. Va no. N. C. no. S. C. no. Geo. no.

The Clause relating to exports being reconsidered, at the instance of Col: Mason, who urged that the restriction on the States would prevent the incidental duties necessary for the inspection & safekeeping of their produce, and be ruinous to the Staple States, as he called the five Southern States, he moved as follows—"provided nothing herein contained shall be construed to restrain any State from laying duties upon exports for the sole purpose of defraying the charges of inspecting, packing, storing

and indemnifying the losses in keeping the commodities in the care of public officers, before exportation." In answer to a remark which he anticipated, to wit, that the States could provide for these expences, by a tax in some other way, he stated the inconveniency of requiring the Planters to pay a tax before the actual delivery for exportation.

Mr Madison 2^ded^ the motion. It would at least be harmless; and might have the good effect of restraining the States to bona fide duties for the purpose, as well as of authorizing explicitly such duties; tho' perhaps the best guard against an abuse of the power of the States on this subject, was the right in the Genl Government to regulate trade between State & State.

Mr Govr Morris saw no objection to the motion. He did not consider the dollar per Hhd laid on Tob^o^ in Virg^a^ as a duty on exportation, as no drawback would be allowed on Tob^o^ taken out of the Warehouse for internal consumption.

Mr Dayton was afraid the proviso w^d^ enable Pennsylv^a^ to tax N. Jersey under the idea of Inspection duties of which Pen^a^ would Judge.

Mr Gorham & Mr Langdon, thought there would be no security if the proviso sh^d^ be agreed to, for the States exporting thro' other States, ag^st^ these oppressions of the latter. How was redress to be obtained in case duties should be laid beyond the purpose expressed?

Mr Madison. There will be the same security as in other cases. The jurisdiction of the supreme

Court must be the source of redress. So far only had provision been made by the plan ag^st^ injurious acts of the States. His own opinion was, that this was sufficient. A negative on the State laws alone could meet all the shapes which these could assume. But this had been overruled.

Mr Fitzimmons. Incidental duties on Tob^o^ & flour never have been & never can be considered as duties on exports.

Mr Dickinson. Nothing will save the States in the situation of N. Hampshire N Jersey Delaware &c from being oppressed by their neighbors, but requiring the assent of Cong^s^ to inspection duties. He moved that this assent sh^d^ accordingly be required.

Mr Butler 2^ded^ the motion.

Adjourned

THURSDAY SEP^R^ 13. 1787. IN CONVENTION

Col. Mason.[1] He had moved without success for a power to make sumptuary regulations. He had not yet lost sight of his object. After descanting on the extravagance of our manners, the excessive consumption of foreign superfluities, and the necessity of restricting it, as well with œconomical as republican views, he moved that a Committee be ap-

[1] The dissensions among the Virginia delegates had leaked out, for Joseph Jones, Fredericksburg, September 13, 1787, wrote to Madison that a rumor of their disagreement was current in Virginia.—Chicago Historical Society MSS.

pointed to report articles of association for encouraging by the advice the influence and the example of the members of the Convention, œconomy frugality and american manufactures.

Doc^{r} Johnson 2^{ded} the motion which was without debate agreed to, nem: con: and a Committee appointed, consisting of Col: Mason, Doc^{r} Franklin, Mr Dickenson, Doc^{r} Johnson and Mr Livingston.[1]

Col: Mason renewed his proposition of yesterday on the subject of inspection laws, with an additional clause giving to Congress a controul over them in case of abuse—as follows:

"Provided that no State shall be restrained from imposing the usual duties on produce exported from such State, for the sole purpose of defraying the charges of inspecting, packing, storing, and indemnifying the losses on such produce, while in the custody of public officers: but all such regulations shall in case of abuse, be subject to the revision and controul of Congress."

There was no debate & on the question

N. H. ay. Mas. ay. C^{t} ay. P^{a} no. Del. no. M^{d} ay. V^{a} ay. N. C. ay. S. C. no. Geo. ay.

The Report from the committee of stile & arrangement, was taken up, in order to be compared with the articles of the plan as agreed to by the House & referred to the Committee, and to receive the final corrections and sanction of the Convention.

Art: 1, sect. 2. On motion of Mr Randolph the

[1] This motion, & appointment of the Comittee, not in the printed Journal. No report was made by the Com^{e}.—Madison's note.

word "servitude" was struck out, and "service" unanimously [1] inserted, the former being thought to express the condition of slaves, & the latter the obligations of free persons.

Mr Dickenson & Mr Wilson moved to strike out, "and direct taxes," from sect. 2, art 1, as improperly placed in a clause relating merely to the Constitution of the House of Representatives.

Mr Govr Morris. The insertion here was in consequence of what had passed on this point; in order to exclude the appearance of counting the negroes in *the Representation*. The including of them may now be referred to the object of direct taxes, and incidentally only to that of Representation.

On the motion to strike out "and direct taxes" from this place N. H. no. Mas. no. Ct no. N. J. ay. Pa no. Del. ay. Md ay. Va no. N. C. no. S. C. no. Geo. no.

Art. 1, sect. 7.—"if any bill shall not be returned by the president within ten days (sundays excepted) after it shall have been presented to him &c"

Mr Madison moved to insert between "after" and "it" in sect. 7, Art. 1 the words "the day on which," in order to prevent a question whether the day on which the bill be presented ought to be counted or not as one of the ten days.

Mr Randolph 2ded the motion.

Mr Governr Morris. The amendment is unnecessary. The law knows no fractions of days.

[1] See page 372 of the printed Journal.—Madison's note.

A number of members being very impatient & calling for the question N. H. no. Mas. no. C^t^ no. N. J. no. P^a^ ay. Del. no. M^d^. ay. V^a^ ay. N. C. no. S. C. no. Geo. no—

Doc^r^ Johnson made a further report from the Committee of stile &c of the following resolutions to be substituted for 22 & 23 articles.

"Resolved that the preceding Constitution be laid before the U. States in Congress assembled, and that it is the opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent & ratification; & that each Convention assenting & ratifying the same should give notice thereof to the U. S. in Cong^s^ assembled.

"Resolved that it is the opinion of this Convention that as soon as the Conventions of nine States, shall have ratified this Constitution, the U. S. in Cong^s^ assembled should fix a day on which electors should be appointed by the States which shall have ratified the same; and a day on which the Electors should assemble to vote for the President; and the time and place for commencing proceedings under this Constitution—That after such publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the day fixed for the election of the President, and should transmit their votes certified signed, sealed and directed, as the Constitution requires, to the Secretary of the U. States in Cong^s^ assembled: that

the Senators and Representatives should convene at the time & place assigned: that the Senators should appoint a President for the sole purpose of receiving, opening, and counting the votes for President, and that after he shall be chosen, the Congress, together with the President should without delay proceed to execute this Constitution."

Adjourned

FRIDAY SEP^{R} 14th 1787. IN CONVENTION

The Report of the Committee of stile & arrangement being resumed,

MR Williamson moved to reconsider in order to increase the number of Representatives fixed for the first Legislature. His purpose was to make an addition of one half generally to the number allotted to the respective States; and to allow two to the smallest States.

On this motion

N. H. no. Mas. no. C^{t} no. N. J. no. P^{a} ay. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. no. Geo. no.

Art. 1. sect. 3. the words "by lot" [1] were struck out nem: con: on motion of Mr Madison, that some rule might prevail in the rotation that would prevent both the members from the same State from going out at the same time.

[1] "By lot" had been reinstated from the Report of five Aug. 6. as a correction of the printed report by the Com^{e} of stile & arrangement.—Madison's note.

"Ex officio" struck out of the same section as superfluous; nem: con; and "or affirmation" after "oath" inserted also unanimously.

Mr. Rutlidge and Mr. Govr. Morris moved "that persons impeached be suspended from their office until they be tried and acquitted"

Mr. Madison. The President is made too dependent already on the Legislature by the power of one branch to try him in consequence of an impeachment by the other. This intermediate suspension, will put him in the power of one branch only. They can at any moment, in order to make way for the functions of another who will be more favorable to their views, vote a temporary removal of the existing magistrate.

Mr. King concurred in the opposition to the amendment

On the question to agree to it

N. H. no. Mas. no. Ct. ay. N. J. no. Pa. no. Del. no. Md. no. Va. no. N. C. no. S. C. ay. Geo. ay.

Art. 1. sect. 4. "except as to the places of choosing Senators" was added nem: con: to the end of the first clause, in order to exempt the seats of Govt. in the States from the power of Congress.

Art. 1. Sect. 5. "Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy."

Col: Mason & Mr. Gerry moved to insert after the word "parts," the words "of the proceedings of the

Senate" so as to require publication of all the proceedings of the House of Representatives.

It was intimated on the other side that cases might arise where secrecy might be necessary in both Houses. Measures preparatory to a declaration of war in which the House of Repr. was to concur, were instanced.

On the question, it passed in the negative

N. H. no. (Rh. I abs) Mas. no. Con: no (N. Y. abs) N. J. no. Pen. ay. Del. no. Mary. ay. Virg. no. N. C. ay. S. C. divd. Geor. no.

Mr. Baldwin observed that the clause, Art. 1. Sect. 6. declaring that no member of Congs. "during the time for which he was elected, shall be appointed to any Civil office under the authority of the U. S. which shall have been created, or the emoluments whereof shall have been increased during such time," would not extend to offices *created by the Constitution;* and the salaries of which would be created, *not increased* by Congs. at their first session. The members of the first Congs. consequently might evade the disqualification in this instance.—He was neither seconded nor opposed; nor did any thing further pass on the subject.

Art. 1. Sect. 8. The Congress "may by joint ballot appoint a Treasurer"

Mr. Rutlidge moved to strike out this power, and let the Treasurer be appointed in the same manner with other officers.

Mr. Gorham & Mr. King said that the motion, if agreed to, would have a mischievous tendency. The

people are accustomed & attached to that mode of appointing Treasurers, and the innovation will multiply objections to the system.

Mr Govr Morris remarked that if the Treasurer be not appointed by the Legislature, he will be more narrowly watched, and more readily impeached.

Mr Sherman. As the two Houses appropriate money, it is best for them to appoint the officer who is to keep it; and to appoint him as they make the appropriation, not by joint but several votes.

Genl Pinkney. The Treasurer is appointed by joint ballot in South Carolina. The consequence is that bad appointments are made, and the Legislature will not listen to the faults of their own officer.

On the motion to strike out

N. H. ay. Mas. no. C^t^ ay. N. J. ay. P^a^ no. Del. ay. M^d^ ay. V^a^ no. N. C. ay. S. C. ay. Geo. ay.

Art 1 sect. 8. "but all such duties imposts & excises, shall be uniform throughout the U. S." were unanimously annexed to the power of taxation.

To define & punish piracies and felonies on the high seas, and "punish" offences against the law of nations.

Mr Govr Morris moved to strike out "punish" before the words "offences ag^st^ the law of nations," so as to let these be *definable* as well as punishable, by virtue of the preceding member of the sentence.

Mr Wilson hoped the alteration would by no means be made. To pretend to *define* the law of nations which depended on the authority of all the

civilized nations of the world, would have a look of arrogance, that would make us ridiculous.

Mr. Govr. Morris. The word *define* is proper when applied to *offences* in this case; the law of nations being often too vague and deficient to be a rule.

On the question to strike out the word "punish" it passed in the affirmative N. H. ay. Mas. no. Ct. ay. N. J. ay. Pa. no. Del. ay. Md. no. Va. no. N. C. ay. S. C. ay. Geo. no.

Doct. Franklin moved [1] to add after the words "post roads" Art 1. Sect. 8. "a power to provide for cutting canals where deemed necessary"

Mr. Wilson 2ded the motion

Mr. Sherman objected. The expence in such cases will fall on the U. States, and the benefit accrue to the places where the canals may be cut.

Mr. Wilson. Instead of being an expence to the U. S. they may be made a source of revenue.

Mr. Madison suggested an enlargement of the motion into a power "to grant charters of incorporation where the interest of the U. S. might require & the legislative provisions of individual States may be incompetent." His primary object was however to secure an easy communication between the States which the free intercourse now to be opened, seemed to call for. The political obstacles being removed, a removal of the natural ones as far as possible ought to follow. Mr. Randolph 2ded the proposition.

[1] This motion by Dr. Franklin not stated in the printed Journal, as are some other motions.—Madison's note.

Mr King thought the power unnecessary.

Mr Wilson. It is necessary to prevent *a State* from obstructing the *general* welfare.

Mr King. The States will be prejudiced and divided into parties by it. In Philada & New York, It will be referred to the establishment of a Bank, which has been a subject of contention in those Cities. In other places it will be referred to mercantile monopolies.

Mr Wilson mentioned the importance of facilitating by canals, the communication with the Western settlements. As to Banks he did not think with Mr King that the power in that point of view would excite the prejudices & parties apprehended. As to mercantile monopolies they are already included in the power to regulate trade.

Col: Mason was for limiting the power to the single case of Canals. He was afraid of monopolies of every sort, which he did not think were by any means already implied by the Constitution as supposed by Mr Wilson.

The motion being so modified as to admit a distinct question specifying & limited to the case of canals,

N. H. no. Mas. no. Ct no. N. J. no. Pa ay. Del. no. Md no. Va ay. N. C. no. S. C. no. Geo. ay.

The other part fell of course, as including the power rejected.

Mr Madison & Mr Pinkney then moved to insert in the list of powers vested in Congress a power—"to

establish an University, in which no preferences or distinctions should be allowed on account of Religion."

Mr. Wilson supported the motion

Mr. Govr. Morris. It is not necessary. The exclusive power at the Seat of Government, will reach the object.

On the question

N. H. no. Mas. no. Conn. divd. Dr. Johnson ay. Mr. Sherman no. N. J. no. Pa. ay. Del. no. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. no.

Col: Mason, being sensible that an absolute prohibition of standing armies in time of peace might be unsafe, and wishing at the same time to insert something pointing out and guarding against the danger of them, moved to preface the clause (Art 1 sect. 8) "To provide for organizing, arming and disciplining the militia &c" with the words "And that the liberties of the people may be better secured against the danger of standing armies in time of peace" Mr. Randolph 2ded the motion

Mr. Madison was in favor of it. It did not restrain Congress from establishing a military force in time of peace if found necessary; and as armies in time of peace are allowed on all hands to be an evil, it is well to discountenance them by the Constitution, as far as will consist with the essential power of the Govt. on that head.

Mr. Govr. Morris opposed the motion as setting a dishonorable mark of distinction on the military class of Citizens

Mr Pinkney & Mr Bedford concurred in the opposition.

On the question

N. H. no. Mas. no. Ct no. N. J. no. Pa no. Maryd no. Va ay. N. C. no. S. C. no. Geo. ay.

Col: Mason moved to strike out from the clause (art 1 sect 9.) "no bill of attainder nor any ex post facto law shall be passed" the words "nor any ex post facto law." He thought it not sufficiently clear that the prohibition meant by this phrase was limited to cases of a criminal nature, and no Legislature ever did or can altogether avoid them in Civil cases.

Mr Gerry 2ded the motion but with a view to extend the prohibition to "civil cases," which he thought ought to be done.

On the question; all the States were—no

Mr Pinkney & Mr Gerry, moved to insert a declaration "that the liberty of the Press should be inviolably observed."

Mr Sherman. It is unnecessary. The power of Congress does not extend to the Press. On the question, it passed in the negative

N. H.[1] no. Mas. ay. Ct no. N. J. no. Pa no. Del. no. Md ay. Va ay. N. C. no. S. C. ay: Geo. no.

Art 1. Sect. 9. "no capitation tax shall be laid, unless &c"

Mr Read moved to insert after "capitation" the

[1] In the printed Journal N. Hampshire ay.—Madison's note.

words, "or other direct tax" He was afraid that some liberty might otherwise be taken to saddle the States, with a readjustment by this rule, of past requisitions of Cong[s]—and that his amendment by giving another cast to the meaning would take away the pretext. M[r] Williamson 2[ded] the motion which was agreed to. On motion of Col: Mason "or enumeration" inserted after, as explanatory of "Census" Con. & S. C. only, no.[1]

At the end of the clause "no tax or duty shall be laid on articles exported from any State" was added the following amendment conformably to a vote on the [31] of [August] viz—no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to or from one State, be obliged to enter, clear or pay duties in another.

Col. Mason moved a clause requiring "that an Account of the public expenditures should be annually published" M[r] Gerry 2[ded] the motion

M[r] Gov[r] Morris urged that this w[d] be impossible in many cases.

M[r] King remarked, that the term expenditures went to every minute shilling. This would be impracticable. Cong[s] might indeed make a monthly publication, but it would be in such general statements as would afford no satisfactory information.

M[r] Madison proposed to strike out "annually" from the motion & insert "from time to time,"

[1] The words "Con. & S. C. only no" are in the handwriting of John C. Payne, Madison's brother-in-law.

which would enjoin the duty of frequent publications and leave enough to the discretion of the Legislature. Require too much and the difficulty will beget a habit of doing nothing. The articles of Confederation require halfyearly publications on this subject. A punctual compliance being often impossible, the practice has ceased altogether.

Mr Wilson 2ded & supported the motion. Many operations of finance cannot be properly published at certain times.

Mr Pinkney was in favor of the motion.

Mr Fitzimmons. It is absolutely impossible to publish expenditures in the full extent of the term.

Mr Sherman thought "from time to time" the best rule to be given.

"Annual" was struck out—& those words—inserted nem: con:

The motion of Col: Mason so amended was then agreed to nem: con: and added after—"appropriations by law" as follows—"And a regular statement and account of the receipts & expenditures of all public money shall be published from time to time"

The first clause of Art. 1 Sect. 10—was altered so as to read—"no State shall enter into any Treaty alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold & silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

Mr Gerry entered into observations inculcating the importance of public faith, and the propriety of the restraint put on the States from impairing the obligation of contracts, alledging that Congress ought to be laid under the like prohibitions, he made a motion to that effect. He was not 2ded

Adjourned.

Saturday Sepr 15th 1787. In Convention

Mr Carrol reminded the House that no address to the people had yet been prepared. He considered it of great importance that such an one should accompany the Constitution. The people had been accustomed to such on great occasions, and would expect it on this. He moved that a Committee be appointed for the special purpose of preparing an address.

Mr Rutlidge objected on account of the delay it would produce and the impropriety of addressing the people before it was known whether Congress would approve and support the plan. Congress if an address be thought proper can prepare as good a one. The members of the Convention can also explain the reasons of what has been done to their respective Constituents.

Mr Sherman concurred in the opinion that an address was both unnecessary and improper.

On the motion of Mr Carrol

N. H. no. Mas. no. Ct no. N. J. no. Pa ay.

Del. ay. Md. ay. Va. ay. N. C.[1] abst. S. C.[1] no. Geo. no.

Mr. Langdon. Some gentlemen have been very uneasy that no increase of the number of Representatives has been admitted. It has in particular been thought that one more ought to be allowed to N. Carolina. He was of opinion that an additional one was due both to that State and to Rho: Island, & moved to reconsider for that purpose.

Mr. Sherman. When the Committee of eleven reported the apportionment—five Representatives were thought the proper share of N. Carolina. Subsequent information however seemed to entitle that State to another.

On the motion to reconsider

N. H. ay. Mas. no. Ct. ay. N. J. no. Pen. divd. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. Langdon moved to add 1 member to each of the Representations of N. Carolina & Rho: Island.[2]

Mr. King was agst. any change whatever as opening the door for delays. There had been no official

[1] In the printed Journal N. Carolina no—S. Carol: omitted.—Madison's note.

[2] The MS. official Journal says: "It was moved and seconded to" ——and here finally ends, and the minutes for September 15 are crossed out (Const. MSS.). They are given in the printed Journal, and a note says the journal for that day and Monday was completed from minutes furnished by Madison (p. 379). October 22, 1818, Adams wrote to Madison asking him to complete the Journal. He replied from Montpelier, November 2:

"I have received your letter of 22 ult: and enclose such extracts from my notes relating to the two last days of the Constitution, as may

proof that the numbers of N. C are greater than before estimated, and he never could sign the Constitution if Rho: Island is to be allowed two members that is one fourth of the number allowed to Massts, which will be known to be unjust.

Mr Pinkney urged the propriety of increasing the number of Rep^s^ allotted to N. Carolina.

Mr Bedford contended for an increase in favor of Rho: Island, and of Delaware also it passed in the negative.

On the question for allowing two Rep^s^ to Rho: Island, it passed in the negative.

N. H. ay. Mas. no. C^t^ no. N. J. no. P^a^ no. Del. ay. M^d^ ay. V^a^ no. N. C. ay. S. C. no. Geo. ay.

On the question for allowing six to N. Carolina, it passed in the negative

N. H. no. Mas. no. C^t^ no. N. J. no. P^a^ no. Del. no. M^d^ ay. V^a^ ay. N. C. ay. S. C. ay. Geo. ay.

Art 1. Sect. 10. (paragraph 2) "No State shall, without the consent of Congress lay imposts or duties on imports or exports; nor with such consent, but to the use of the Treasury of the U. States."

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fill in the chasm in the Journals, according to the mode in which the proceedings are recorded"—State Dept. MSS., Miscl. Letters.

Later (June 18, 1819) Adams sent him lists of yeas and nays, and he replied (Montpelier, June 27, 1819): "I return the list of yeas & nays in the Convention, with the blanks filled in according to your request, as far as I could do it by tracing the order of the yeas & nays & their coincidency with those belonging to successive questions in my papers."—Mad. MSS.

In consequence of the proviso moved by Col: Mason; and agreed to on the 13 Sep^{r}, this part of the section was laid aside in favor of the following substitute viz: "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its Inspection laws; and the nett produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the U. S; and all such laws shall be subject to the revision and controul of the Congress"

On a motion to strike out the last part "and all such laws shall be subject to the revision and controul of the Congress" it passed in the negative.

N. H. no. Mas. no. C^{t} no. N. J. no. P^{a} div^{d} Del. no. M^{d} no. V^{a} ay. N. C. ay. S. C. no. Geo. ay.

The substitute was then agreed to; Virg^{a} alone being in the negative.

The remainder of the paragraph being under consideration—viz—"nor keep troops nor ships of war in time of peace, nor enter into any agreement or compact with another State, nor with any foreign power. Nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of delay, until Congress can be consulted"

M^{r} McHenry & Mr Carrol moved that "no State shall be restrained from laying duties of tonnage for the purpose of clearing harbours and erecting lighthouses."

Col. Mason in support of this explained and urged the situation of the Chesapeak which peculiarly required expences of this sort.

Mr. Govr. Morris. The States are not restrained from laying tonnage as the Constitution now stands. The exception proposed will imply the contrary, and will put the States in a worse condition than the gentleman (Col. Mason) wishes.

Mr. Madison. Whether the States are now restrained from laying tonnage duties, depends on the extent of the power "to regulate commerce." These terms are vague, but seem to exclude this power of the States. They may certainly be restrained by Treaty. He observed that there were other objects for tonnage Duties as the support of seamen &c. He was more & more convinced that the regulation of Commerce was in its nature indivisible and ought to be wholly under one authority.

Mr. Sherman. The power of the U. States to regulate trade being supreme can controul interferences of the State regulations when such interferences happen; so that there is no danger to be apprehended from a concurrent jurisdiction.

Mr. Langdon insisted that the regulation of tonnage was an essential part of the regulation of trade, and that the States ought to have nothing to do with it. On motion "that no State shall lay any duty on tonnage without the consent of Congress"

N. H. ay. Mas. ay. Ct. divd. N. J. ay. Pa. no. Del. ay. Md. ay. Va. no. N. C. no. S. C. ay. Geo. no.

The remainder of the paragraph was then remoulded and passed as follows viz—"No State shall without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

Art II. sect. 1. (paragraph 6) "or the period for chusing another president arrive" were changed into "or a President shall be elected" conformably to a vote of the of .

Mr Rutlidge and Docr Franklin moved to annex to the end of paragraph 7. Sect. 1. Art II—"and he (the President) shall not receive, within that period, any other emolument from the U. S. or any of them." on which question

N. H. ay. Mas. ay. Ct no. N. J. no. Pa ay. Del. no. Md ay. Va ay. N. C. no. S. C. ay. Geo. —ay.

Art: II. Sect. 2. "he shall have power to grant reprieves and pardons for offences against the U. S. &c"

Mr Randolph moved to except "cases of treason." The prerogative of pardon in these cases was too great a trust. The President may himself be guilty. The Traitors may be his own instruments.

Col: Mason supported the motion.

Mr Govr Morris had rather there should be no pardon for treason, than let the power devolve on the Legislature.

Mr Wilson. Pardon is necessary for cases of treason, and is best placed in the hands of the Executive. If he be himself a party to the guilt he can be impeached and prosecuted.

Mr King thought it would be inconsistent with the Constitutional separation of the Executive & Legislative powers to let the prerogative be exercised by the latter. A Legislative body is utterly unfit for the purpose. They are governed too much by the passions of the moment. In Massachusetts, one assembly would have hung all the insurgents in that State: the next was equally disposed to pardon them all. He suggested the expedient of requiring the concurrence of the Senate in acts of Pardon.

Mr Madison admitted the force of objections to the Legislature, but the pardon of treasons was so peculiarly improper for the President that he should acquiesce in the transfer of it to the former, rather than leave it altogether in the hands of the latter. He would prefer to either an association of the Senate as a Council of advice, with the President.

Mr Randolph could not admit the Senate into a share of the power. The great danger to liberty lay in a combination between the President & that body.

Col: Mason. The Senate has already too much power. There can be no danger of too much lenity in legislative pardons, as the Senate must concur, & the President moreover can require $^2/_3$ of both Houses.

On the motion of Mr Randolph

N. H. no—Mas. no. C^{t} div^{d} N. J. no. P^{a} no. Del. no. M^{d} no. V^{a} ay. N. C. no. S. C. no. Geo. ay.

Art II. Sect. 2. (paragraph 2) To the end of this, Mr Govern^{r} Morris moved to annex "but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the Courts of law, or in the heads of Departments." Mr Sherman 2^{ded} the motion

Mr Madison. It does not go far enough if it be necessary at all. Superior officers below Heads of Departments ought in some cases to have the appointment of the lesser offices.

Mr Govr Morris There is no necessity. Blank commissions can be sent—

On the motion

N. H. ay. Mas. no. C^{t} ay. N. J. ay. P^{a} ay. Del. no. M^{d} div^{d} V^{a} no. N. C. ay. S. C. no. Geo. no.

The motion being lost by an equal division of votes, It was urged that it be put a second time some such provision being too necessary to be omitted, and on a second question it was agreed to nem: con.

Art. II. Sect. 1. The words "and not per capita" were struck out as superfluous and the words "by the Representatives" also—as improper, the choice of President being in another mode as well as eventually by the House of Rep^{s}

Art II. Sect. 2. After "officers of the U. S. whose appointments are not otherwise provided for," were

added the words "and which shall be established by law."

Art III. Sect. 2. parag: 3. Mr Pinkney & Mr Gerry moved to annex to the end, "And a trial by jury shall be preserved as usual in civil cases."

Mr Gorham. The constitution of Juries is different in different States and the trial itself is *usual* in different cases in different States.

Mr King urged the same objections

Genl Pinkney also. He thought such a clause in the Constitution would be pregnant with embarrassments.

The motion was disagreed to nem: con:

Art. IV. Sect. 2. parag: 3. the term "legally" was struck out, and "under the laws thereof" inserted after the word "State" in compliance with the wish of some who thought the term legal equivocal, and favoring the idea that slavery was legal in a moral view.

Art. IV. Sect 3. "New States may be admitted by the Congress into this Union: but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congs"

Mr Gerry moved to insert after "or parts of States" the words "or a State and part of a State" which was disagreed to by a large majority; it appearing to be supposed that the case was comprehended in the words of the clause as reported by the Committee.

Art. IV. Sect. 4. After the word "Executive" were inserted the words "when the Legislature cannot be convened."

Art. V. "The Congress, whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several States shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the Legislatures of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided that no amendment which may be made prior to the year 1808 shall in any manner affect the 1 & 4 clauses in the 9. Section of article 1"

Mr Sherman expressed his fears that three fourths of the States might be brought to do things fatal to particular States, as abolishing them altogether or depriving them of their equality in the Senate. He thought it reasonable that the proviso in favor of the States importing slaves should be extended so as to provide that no State should be affected in its internal police, or deprived of its equality in the Senate.

Col: Mason thought the plan of amending the Constitution exceptionable & dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people,

if the Government should become oppressive, as he verily believed would be the case.

Mr. Govr. Morris & Mr. Gerry moved to amend the article so as to require a Convention on application of $^2/_3$ of the Sts

Mr. Madison did not see why Congress would not be as much bound to propose amendments applied for by two thirds of the States as to call a Convention on the like application. He saw no objection however against providing for a Convention for the purpose of amendments, except only that difficulties might arise as to the form, the quorum &c. which in constitutional regulations ought to be as much as possible avoided.

The motion of Mr. Govr Morris & Mr. Gerry was agreed to nem: con: (see the first part of the article as finally past)

Mr. Sherman moved to strike out of art. V. after "legislatures" the words "of three fourths" and so after the word "Conventions" leaving future Conventions to act in this matter, like the present Conventions according to circumstances.

On this motion

N. H. divd. Mas. ay. Ct. ay. N. J. ay. Pa. no. Del. no. Md. no. Va. no. N. C. no. S. C. no. Geo— no.

Mr. Gerry moved to strike out the words "or by Conventions in three fourths thereof" On this motion

N. H. no. Mas. no. Ct. ay. N. J. no. Pa. no. Del. no. Md. no. Va. no. N. C. no. S. C. no. Geo. no.

Mr Sherman moved according to his idea above expressed to annex to the end of the article a further proviso "that no State shall without its consent be affected in its internal police, or deprived of its equal suffrage in the Senate."

Mr Madison. Begin with these special provisos, and every State will insist on them, for their boundaries, exports &c.

On the motion of Mr Sherman

N. H. no. Mas. no. Ct ay. N. J. ay. Pa no. Del. ay. Md no. Va no. N. C. no. S. C. no. Geo. no.

Mr Sherman then moved to strike out art V altogether

Mr Brearley 2ded the motion, on which

N. H. no. Mas. no. Ct ay. N. J. ay. Pa no. Del divd Md no. Va no. N. C. no. S. C. no. Geo. no

Mr Govr Morris moved to annex a further proviso —"that no State, without its consent shall be deprived of its equal suffrage in the Senate"

This motion being dictated by the circulating murmurs of the small States was agreed to without debate, no one opposing it, or on the question, saying no.

Col: Mason expressing his discontent at the power given to Congress by a bare majority to pass navigation acts, which he said would not only enhance the freight, a consequence he did not so much regard — but would enable a few rich merchants in Philada N. York & Boston, to monopolize the

Staples of the Southern States & reduce their value perhaps 50 Per C^{t} moved a further proviso that no law in the nature of a navigation act be passed before the year 1808, without the consent of $^{2}/_{3}$ of each branch of the Legislature

On this motion

N. H. no. Mas. no. C^{t} no. N. J. no. P^{a} no. Del. no. M^{d} ay. V^{a} ay. N. C. abs^{t} S. C. no. Geo. ay.

Mr Randolph animadverting on the indefinite and dangerous power given by the Constitution to Congress, expressing the pain he felt at differing from the body of the Convention, on the close of the great & awful subject of their labours, and anxiously wishing for some accommodating expedient which would relieve him from his embarrassments, made a motion importing "that amendments to the plan might be offered by the State Conventions, which should be submitted to and finally decided on by another general Convention" Should this proposition be disregarded, it would he said be impossible for him to put his name to the instrument. Whether he should oppose it afterwards he would not then decide but he would not deprive himself of the freedom to do so in his own State, if that course should be prescribed by his final judgment.

Col: Mason 2^{ded} & followed Mr Randolph in animadversions on the dangerous power and structure of the Government, concluding that it would end either in monarchy, or a tyrannical aristocracy; which, he was in doubt, but one or other, he was

sure. This Constitution had been formed without the knowledge or idea of the people. A second Convention will know more of the sense of the people, and be able to provide a system more consonant to it. It was improper to say to the people, take this or nothing. As the Constitution now stands, he could neither give it his support or vote in Virginia; and he could not sign here what he could not support there. With the expedient of another Convention as proposed, he could sign.

Mr Pinkney. These declarations from members so respectable at the close of this important scene, give a peculiar solemnity to the present moment. He descanted on the consequences of calling forth the deliberations & amendments of the different States on the subject of Government at large. Nothing but confusion & contrariety could spring from the experiment. The States will never agree in their plans, and the Deputies to a second Convention coming together under the discordant impressions of their Constituents, will never agree. Conventions are serious things, and ought not to be repeated. He was not without objections as well as others to the plan. He objected to the contemptible weakness & dependence of the Executive. He objected to the power of a majority only of Cong^s^ over Commerce. But apprehending the danger of a general confusion, and an ultimate decision by the sword, he should give the plan his support.

Mr Gerry stated the objections which determined him to withhold his name from the Constitution. 1.

the duration and re-eligibility of the Senate. 2. the power of the House of Representatives to conceal their journals. 3. the power of Congress over the places of election. 4. the unlimited power of Congress over their own compensation. 5. Massachusetts has not a due share of Representatives allotted to her. 6. $^3/_5$ of the Blacks are to be represented as if they were freemen. 7. Under the power over commerce, monopolies may be established. 8. The vice president being made head of the Senate. He could however he said get over all these, if the rights of the Citizens were not rendered insecure 1. by the general power of the Legislature to make what laws they may please to call necessary and proper. 2. raise armies and money without limit. 3. to establish a tribunal without juries, which will be a Star-chamber as to Civil cases. Under such a view of the Constitution, the best that could be done he conceived was to provide for a second general Convention.

On the question on the proposition of Mr Randolph. All the States answered no

On the question to agree to the Constitution as amended. All the States ay.

The Constitution was then ordered to be engrossed. and the House adjourned.

MONDAY SEP^R^ 17. 1787. IN CONVENTION

The engrossed Constitution being read.

Doc^r^ Franklin rose with a speech in his hand, which

he had reduced to writing for his own conveniency, and which Mr Wilson read in the words following.

Mr President

I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men indeed as well as most sects in Religion think themselves in possession of all truth, and that wherever others differ from them it is so far error. Steele a Protestant in a Dedication tells the Pope, that the only difference between our Churches in their opinions of the certainty of their doctrines is, the Church of Rome is infallible and the Church of England is never in the wrong. But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain french lady, who in a dispute with her sister, said "I don't know how it happens, Sister but I meet with nobody but myself, that is always in the right—*Il n'y a que moi qui a toujours raison.*"

In these sentiments, Sir, I agree to this Constitution with all its faults, if they are such; because I think a general Government necessary for us, and there is no form of Government but what may be a

blessing to the people if well administered, and believe farther that this is likely to be well administered for a course of years, and can only end in Despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic Government, being incapable of any other. I doubt too whether any other Convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors, I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. If every one of us in returning to our Constituents were to report the objections he has had to it, and endeavor to gain partizans in support of them, we might prevent its being generally received, and thereby lose all the

salutary effects & great advantages resulting naturally in our favor among foreign nations as well as among ourselves, from our real or apparent unanimity. Much of the strength & efficiency of any Government in procuring and securing happiness to the people, depends, on opinion, on the general opinion of the goodness of the Government, as well as of the wisdom and integrity of its Governors. I hope therefore that for our own sakes as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress & confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts & endeavors to the means of having it well administered.

On the whole, Sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument.—He then moved that the Constitution be signed by the members and offered the following as a convenient form viz: "Done in Convention by the unanimous consent of *the States* present the 17th of Sepr &c.—In witness whereof we have hereunto subscribed our names."

This ambiguous form had been drawn up by Mr G. M. in order to gain the dissenting members, and put into the hands of Docr Franklin that it might have the better chance of success.

Mr Gorham said if it was not too late he could

wish, for the purpose of lessening objections to the Constitution, that the clause declaring "the number of Representatives shall not exceed one for every forty thousand" which had produced so much discussion, might be yet reconsidered, in order to strike out 40,000 & insert "thirty thousand." This would not he remarked establish that as an absolute rule, but only give Congress a greater latitude which could not be thought unreasonable.

Mr King & Mr Carrol seconded & supported the ideas of Mr Gorham.

When the President rose, for the purpose of putting the question, he said that although his situation had hitherto restrained him from offering his sentiments on questions depending in the House, and it might be thought, ought now to impose silence on him, yet he could not forbear expressing his wish that the alteration proposed might take place. It was much to be desired that the objections to the plan recommended might be made as few as possible. The smallness of the proportion of Representatives had been considered by many members of the Convention an insufficient security for the rights & interests of the people. He acknowledged that it had always appeared to himself among the exceptionable parts of the plan, and late as the present moment was for admitting amendments, he thought this of so much consequence that it would give much satisfaction to see it adopted.[1]

[1] This was the only occasion on which the President entered at all into the discussions of the Convention.—Madison's note.

No opposition was made to the proposition of Mr Gorham and it was agreed to unanimously.

On the question to agree to the Constitution enrolled in order to be signed. It was agreed to all the States answering ay.

Mr Randolph then rose and with an allusion to the observations of Docr Franklin apologized for his refusing to sign the Constitution notwithstanding the vast majority & venerable names that would give sanction to its wisdom and its worth. He said however that he did not mean by this refusal to decide that he should oppose the Constitution without doors. He meant only to keep himself free to be governed by his duty as it should be prescribed by his future judgment. He refused to sign, because he thought the object of the convention would be frustrated by the alternative which it presented to the people. Nine States will fail to ratify the plan and confusion must ensue. With such a view of the subject he ought not, he could not, by pledging himself to support the plan, restrain himself from taking such steps as might appear to him most consistent with the public good.

Mr Govr Morris said that he too had objections, but considering the present plan as the best that was to be attained, he should take it with all its faults. The majority had determined in its favor, and by that determination he should abide. The moment this plan goes forth all other considerations will be laid aside, and the great question will be, shall there be a national Government or not? and this must take

place or a general anarchy will be the alternative. He remarked that the signing in the form proposed related only to the fact that the *States* present were unanimous.

Mr Williamson suggested that the signing should be confined to the letter accompanying the Constitution to Congress, which might perhaps do nearly as well, and would be found satisfactory to some members [1] who disliked the Constitution. For himself he did not think a better plan was to be expected and had no scruples against putting his name to it.

Mr Hamilton expressed his anxiety that every member should sign. A few characters of consequence, by opposing or even refusing to sign the Constitution, might do infinite mischief by kindling the latent sparks which lurk under an enthusiasm in favor of the Convention which may soon subside. No man's ideas were more remote from the plan than his own were known to be; but is it possible to deliberate between anarchy and Convulsion on one side, and the chance of good to be expected from the plan on the other.

Mr Blount [2] said he had declared that he would not sign, so as to pledge himself in support of the plan, but he was relieved by the form proposed and would

[1] He alluded to Mr Blount for one.—Madison's note.

[2] "Mr. Blount is a character strongly marked for integrity and honor. He has been twice a Member of Congress, and in that office discharged his duty with ability and faithfulness. He is no Speaker, nor does he possess any of those talents that make Men shine;—he is plain, honest, and sincere. Mr. Blount is about 36 years of age."—Pierce's notes, *Amer. Hist. Rev.*, iii., 329.

without committing himself attest the fact that the plan was the unanimous act of the States in Convention.

Doc[r] Franklin expressed his fears from what M[r] Randolph had said, that he thought himself alluded to in the remarks offered this morning to the House. He declared that when drawing up that paper he did not know that any particular member would refuse to sign his name to the instrument, and hoped to be so understood. He possessed a high sense of obligation to M[r] Randolph for having brought forward the plan in the first instance, and for the assistance he had given in its progress, and hoped that he would yet lay aside his objections, and by concurring with his brethren, prevent the great mischief which the refusal of his name might produce.

M[r] Randolph could not but regard the signing in the proposed form, as the same with signing the Constitution. The change of form therefore could make no difference with him. He repeated that in refusing to sign the Constitution he took a step which might be the most awful of his life, but it was dictated by his conscience, and it was not possible for him to hesitate, much less, to change. He repeated also his persuasion, that the holding out this plan with a final alternative to the people, of accepting or rejecting it in toto, would really produce the anarchy & civil convulsions which were apprehended from the refusal of individuals to sign it.

M[r] Gerry described the painful feelings of his situation, and the embarrassments under which he rose

to offer any further observations on the subject wch had been finally decided. Whilst the plan was depending, he had treated it with all the freedom he thought it deserved. He now felt himself bound as he was disposed to treat it with the respect due to the Act of the Convention. He hoped he should not violate that respect in declaring on this occasion his fears that a Civil war may result from the present crisis of the U. S. In Massachusetts, particularly he saw the danger of this calamitous event—In that State there are two parties, one devoted to Democracy, the worst he thought of all political evils, the other as violent in the opposite extreme. From the collision of these in opposing and resisting the Constitution, confusion was greatly to be feared. He had thought it necessary, for this & other reasons that the plan should have been proposed in a more mediating shape, in order to abate the heat and opposition of parties. As it had been passed by the Convention, he was persuaded it would have a contrary effect. He could not therefore by signing the Constitution pledge himself to abide by it at all events. The proposed form made no difference with him. But if it were not otherwise apparent, the refusals to sign should never be known from him. Alluding to the remarks of Doc^r^ Franklin, he could not he said but view them as levelled at himself and the other gentlemen who meant not to sign.

Genl Pinkney. We are not likely to gain many converts by the ambiguity of the proposed form of signing. He thought it best to be candid and let the

form speak the substance. If the meaning of the signers be left in doubt, his purpose would not be answered. He should sign the Constitution with a view to support it with all his influence, and wished to pledge himself accordingly.

Doc[r] Franklin. It is too soon to pledge ourselves before Congress and our Constituents shall have approved the plan.

M[r] Ingersol [1] did not consider the signing, either as a mere attestation of the fact, or as pledging the signers to support the Constitution at all events; but as a recommendation, of what, all things considered, was the most eligible.

On the motion of Doc[r] Franklin

N. H. ay. Mas. ay. C[t] ay. N. J. ay. P[a] ay. Del. ay. M[d] ay. V[a] ay. N. C. ay. S. C. div[d] [2] Geo. ay.

M[r] King suggested that the Journals of the Convention should be either destroyed, or deposited in the custody of the President. He thought if suffered to be made public, a bad use would be made of them by those who would wish to prevent the adoption of the Constitution.

M[r] Wilson preferd the second expedient, he had at one time liked the first best; but as false sugges-

[1] "Mr. Ingersol is a very able Attorney and possesses a clear legal understanding. He is well educated in the Classic's, and is a Man of very extensive reading. Mr. Ingersol speaks well, and comprehends his subject fully. There is modesty in his character that keeps him back. He is about 36 years old."— Pierce's notes, *Amer. Hist. Rev.*, iii., 329.

[2] Gen[l] Pinkney & M[r] Butler disliked the equivocal form of the signing, and on that account voted in the negative.—Madison's note.

tions may be propagated it should not be made impossible to contradict them.

A question was then put on depositing the Journals and other papers of the Convention in the hands of the President, on which,

N. H. ay. Mtts ay. Ct ay. N. J. ay. Pen[a] ay. Del. ay. Md no.[1] Va ay. N. C. ay. S. C. ay. Geo. ay.[2]

The President having asked what the Convention meant should be done with the Journals &c. whether copies were to be allowed to the members if applied for. It was Resolved nem. con: "that he retain the Journal and other papers, subject to the order of Congress, if ever formed under the Constitution."

The members then proceeded to sign the instrument.

Whilst the last members were signing it Doct[r] Franklin looking towards the President's Chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that Painters

[1] This negative of Maryland was occasioned by the language of the instructions to the Deputies of that State, which required them to report to the State, the *proceedings* of the Convention.—Madison's note.

[2] "Major Jackson presents his most respectful compliments to General Washington—

"He begs leave to request his signature to forty Diplomas intended for the Rhode Island Society of the Cincinnati.

"Major Jackson, after burning all the loose scraps of paper which belong to the Convention, will this evening wait upon the General with the Journals and other papers which their vote directs to be delivered to His Excellency

"Monday evening"

Endorsed in Washington's hand: "Majr Wm Jackson 17th Sep. 1787" —Wash. MSS.

had found it difficult to distinguish in their art a rising from a setting sun. I have said he, often and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting Sun.

The Constitution being signed by all the members except Mr Randolph, Mr Mason and Mr Gerry, who declined giving it the sanction of their names, the Convention dissolved itself by an Adjournment sine die [1]—

[Following is a literal copy of the engrossed Constitution as signed. It is in four sheets, with an additional sheet containing the resolutions of transmissal. The note indented at the end is in the original precisely as reproduced here.]

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

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[1] The few alterations and corrections made in these debates which are not in my handwriting, were dictated by me and made in my presence by John C. Payne. James Madison.—Madison's note.

Article. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one

Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or

alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meetings shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of

the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that

House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for Limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplin-

ing, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

⌜No bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Con-

gress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article. II.

Section. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State

with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give

their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on

extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article. III.

Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Contro-

versies to which the United States shall be a Party; —to Controversies between two or more States;— between a State and Citizens of another State;— between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. IV.

Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and

make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any Claims of the United States, or of any particular State.

Section. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

done in Convention by the Unanimous Consent of the States present the Seven-

The Word, "the," being interlined between the seventh and eighth Lines of the first

Page, The Word "Thirty" being partly written on an Erazure in the fifteenth Line of the first Page, The Words "is tried" being interlined between the thirty second and thirty third Lines of the first Page and the Word "the" being interlined between the forty third and forty fourth Lines of the second Page.

teenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

Attest WILLIAM JACKSON Secretary

G° WASHINGTON—Presid^{t}
and deputy from Virginia

New Hampshire	JOHN LANGDON NICHOLAS GILMAN
Massachusetts	NATHANIEL GORHAM RUFUS KING
Connecticut	W^{M} SAM^{L} JOHNSON ROGER SHERMAN
New York . . .	ALEXANDER HAMILTON
New Jersey	WIL: LIVINGSTON DAVID BREARLEY. W^{M} PATERSON. JONA: DAYTON
Pennsylvania	B FRANKLIN THOMAS MIFFLIN ROB^{T} MORRIS GEO. CLYMER THO^{S} FITZSIMONS JARED INGERSOLL JAMES WILSON GOUV MORRIS

Delaware	GEO: READ GUNNING BEDFORD jun JOHN DICKINSON RICHARD BASSETT JACO: BROOM
Maryland	JAMES M^{C}HENRY DAN OF S^{T} THO^{S} JENIFER DAN^{L} CARROLL.
Virginia	JOHN BLAIR— JAMES MADISON Jr.
North Carolina	W^{M} BLOUNT RICH^{D} DOBBS SPAIGHT. HU WILLIAMSON
South Carolina	J. RUTLEDGE CHARLES COTESWORTH PINCKNEY CHARLES PINCKNEY PIERCE BUTLER.
Georgia	WILLIAM FEW ABR BALDWIN

IN CONVENTION Monday September 17th 1787.

Present

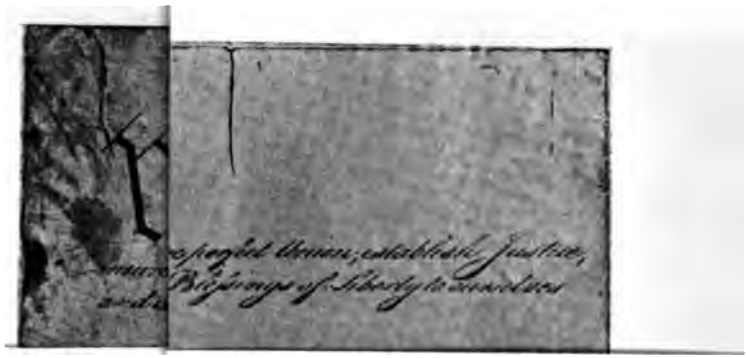
The States of

New Hampshire, Massachusetts, Connecticut, Mr Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Resolved,

That the preceeding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled.

Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the

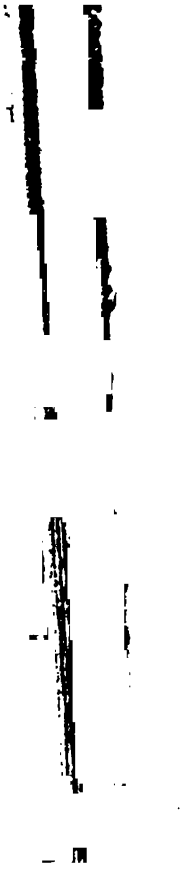


President, should, without Delay, proceed to execute this Constitution.

By the Unanimous Order of the Convention

G^{o} WASHINGTON Presid^{t}

W. JACKSON Secretary.



INDEX

TO VOLUMES III. AND IV., BEING THE JOURNAL OF THE CONSTITUTIONAL CONVENTION.

A

Accounts of expenditures. *See* Expenditures of government.
Acts, originating of. *See* Legislature, national, acts of.
Address to accompany constitution, moved, iv., 421; considered, 458.
Adjournment of legislature. *See* Legislature, national, power of.
Age, of executive. *See* Executive, national, age of.
Of Representatives. *See* Legislature, national, House of Representatives.
Of Senators. *See* Legislature, national, Senate.
Allen, Paul, signs address from Rhode Island, iii., 12, n.
Allen, Philip, signs address from Rhode Island, iii., 12, n.
Amendments to constitution, provision for, debated, iii., 94, 145, iv., 467; postponed, iii., 94; debated, 146, 344; agreed to, 164, iv., 36; motion to reconsider clause, 412; moved that states agree to, 413.
Appointment, power of. *See* Executive, national, power of; Judiciary, national, supreme; Legislature, national, Senate.
Appropriations, originating of, *see* Legislature, national, money bills; accounts of, *see* Expenditures of government.
Aristocracy, fear of, expressed by Mason, iii., 371; defended by G. Morris, 372, iv., 118; probability of, 193.
Armies, power to raise and support. *See* Legislature, national, power of.
Arnold, Welcome, signs address from Rhode Island, iii., 12, n.
Arsenals, Forts, etc. *See* Forts, Arsenals, etc.
Articles of Confederation, amendments to, proposed by Dickinson, iii., 199.

B

Baldwin, Abraham, Ga., attends convention, iii., 136; favors representation in Senate by wealth of states, 324; Pierce's sketch of, 324, n.; on compromise committee on representation, 350; thinks foreigners should be excluded from government, iv., 175; thinks provisions on citizenship should not extend to those already citizens, 179; appointed on grand committee, 233; thinks slave trade not a national question, 269; on committee on navigation acts, 273; moves that duty on slaves be uniform, 305; thinks public lands should be guaranteed to states, 341; on committee of August 31, 354; thinks

Baldwin (*Cont'd*).
members of legislature should be ineligible to other offices, 359; approves plan of electing executive by electors, 367; moves to exclude from new offices members of first legislature, 450.
Bankruptcy, uniform law of. *See* Legislature, national, power of; House of Representatives.
Barton, William, signs address from Rhode Island, iii., 12, n.
Bassett, Richard, Del., attends convention, iii., 2; Pierce's sketch of, 2, n.
Bedford, Gunning, Del., attends convention, iii., 5; favors short term for executive, 63; Pierce's sketch of, 63, n.; opposes absolute veto in executive, 85; opposes negative of state laws by legislature, 125; threatens foreign alliance of small states, 339; on compromise committee on representation, 350; explains threat of foreign alliance, 359; moves that national legislature make laws when harmony would be interrupted by state legislation, 446; prefers appointment of judges by Senate, 464; opposes provision against standing army, iv., 455; favors increase in representation of Rhode Island and Delaware, 460.
Bill of Rights, inclusion of, debated, iv., 442.
Bills of attainder. *See* Legislature, national, power of.
Bills of credit, power to emit. *See* Legislature, national, power of.
Blair, John, Va., attends convention, iii., 2; Pierce's sketch of, 2, n.
Blount, William, N. C., attends convention, iii., 226; announces he will sign constitution, iv., 478; Pierce's sketch of, 478, n.
Bowen, Jabez, signs address from Rhode Island, iii., 12, n.
Brearley, David, N. J., attends convention, iii., 1; favors equal vote of states in national legislature, 130; Pierce's sketch of, 130, n.; moves that New Hampshire delegates be sent for, 325; opposes election of executive by joint ballot, iv., 295; seconds motion to elect executive by states, 296; on committee of August 31, 354; reports from committee, 354, 360, 369; seconds motion against amendments, 469.
Broome, Jacob, Del., attends convention, iii., 2; favors nine years' term for Senators, 284; insists upon equal representation for New Jersey in Senate, 392; opposes adjournment on question of representation, 442; opposes seven years' term for executive, 455; Pierce's sketch of, iv., 9, n.; seconds motion to postpone clause fixing term of executive, 52; seconds motion to except army and navy from disqualification from legislature, 201; thinks legislature can fix their own compensation, 203; favors same compensation for both houses of legislature, 205; thinks national government should punish for treason, 249; seconds motion in favor of national negative of state laws, 286; moves reference of question of term of executive, 297.
Brown, John, signs address from Rhode Island, iii., 12, n.
Brown, Nicholas, signs address from Rhode Island, iii., 12, n.
Butler, Pierce, S. C., attends convention, iii., 2; moves secrecy of proceedings, 11; Pierce's sketch of, 12, n.; moves debate on national government, 38; wants explanation of personnel of Senate, 50; fears deprivation of state powers, 54; favors single executive, 78; opposes absolute negative in executive, 85; proposes power of suspending legislation for executive, 88; opposed to institution of inferior judiciary, 98, 467; opposes indefinite negative of state

Butler (*Cont'd*).
laws by legislature, 127; favors wealth as basis of representation, 137, 143, 367, 385; thinks Senators should have no compensation, 155; thinks Senate should have power to originate money bills, 158; moves vote on compensation of legislature, 254; favors ineligibility to all other offices of Representatives, 256; opposes ineligibility of Representatives to offices created during their term, 260; thinks candidates for office will not be wanting, 265; moves question of representation in Senate, 281; opposes ineligibility of Senators to state offices, 295; opposes report of compromise committee on representation, 357; moves increase in representation of South Carolina, 389; insists upon inclusion of blacks in representation, 397; thinks slave labor as productive as free labor, 398; favors representation by population, 409; demands security for slavery, 422; thinks powers of legislature loosely defined, 440; opposes frequent elections of executive, iv., 11; favors election of executive by electors chosen by state legislatures, 64; opposes re-eligibility of executive, 64; moves to refer question of executive to committee of detail, 68; favors fixing plan for national capital, 81; thinks question of suffrage should be left to states, 117; moves three years' inhabitancy for Representatives, 132; thinks money bills should originate in House, 139; favors long inhabitancy for Senators, 147; urges postponement of clause concerning eligibility of members of legislature to other offices, 201; favors state compensation for members of legislature, 202; opposes power to emit bills of credit, 219, 221; thinks President should have power to declare war, 227; moves that legislature have power to declare peace, 228; thinks militia should be under national control, 237; favors adjustment of taxation to representation, 257; opposes federal power over exports, 259, 271; moves discrimination in paying creditors, 288; moves reconsideration of question of discharging debts, 292; thinks creditors should stand where they are, 302; on committee of August 25, 308; moves that fugitive slaves and servants be surrendered, 323, 324, 332; favors commercial regulations to be made by two-thirds vote, 328; thinks new states should not be made without consent of old states, 335; thinks nine states may ratify constitution, 345; on committee of August 31, 354; thinks election of executive by electors objectionable, 366; favors making treaties of peace without President, 400; thinks Congress must sanction state export duties, 444; dislikes form of signing, 481, n.

C

Canals, provision for, proposed. *See* Legislature, national, power of.
Capital, national. *See* Seat of government.
Capitation tax. *See* Taxation, capitation.
Captures. *See* Legislature, national, power of.
Carrington, Edward, to Jefferson, on progress of convention, iii., 128, n.; to Madison, 156, n.; to Monroe, iv., 109, n.; to Madison, 172, n.
Carroll, Daniel, Md., attends convention, iii., 381; favors national power to suppress insurrection, 471; Pierce's sketch of, iv., 47, n.; doubts propriety of per capita voting in Senate, 47; favors election of executive by

Carroll (*Cont'd*).
electors chosen by lot from national legislature, 57; thinks direct taxation should depend on census, 57; opposes disqualification from legislature of persons having unsettled government accounts, 77; thinks number for quorum cannot be fixed, 163; thinks right of expulsion should be with two-thirds of legislature, 164; moves Senators be permitted to enter dissent to measures, 165; fears New York will be capital, 169; moves five years' citizenship for Representatives, 179; explains provision as to money bills in Maryland, 190; favors national compensation for members of legislature, 203, 204; thinks greater checks to bad laws necessary, 211; thinks a quorum should be more than a majority, 215; thinks exports should not be taxed, 218; opposes taxation by congressional representation, 253; thinks prohibition of *ex post facto* laws necessary, 276; moves election of executive by the people, 294, 297; moves provision to prevent favoring ports of entry, 306; on committee of August 25, 308; objects to requiring consent of states to dismemberment, 336; moves that right of U. S. to public lands be confirmed, 340; moves that land question go to Supreme Court, 341; moves to postpone question of ratification, 344, 346; thinks all the states must ratify, 346; thinks Maryland must ratify as required by Maryland law, 347; thinks vessels should enter and clear in their own states, 353; on committee of August 31, 354; proposes an address to the people, 458; moves states have power to lay tonnage taxes, 461; urges larger representation, 476.
Census, taking of, debated, iii., 393, 408; every fifteen years, vote on, 409; two years after meeting of legislature, 413; ordered within six years after meeting of legislature, 415; every ten years, 416; every twenty years, 416; first to be in three years, iv., 252.
Charters, power to grant, proposed. *See* Legislature, national, power of.
Citizenship, of Representatives, *see* Legislature, national, House of Representatives, Senate; uniformity of, in the several states, agreed to, iv., 323.
Clymer, George, Pa., attends convention, iii., 5; appointed on grand committee, iv., 258; thinks power to tax exports should exist for revenue only, 263; Pierce's sketch of, 263, n.; on committee on navigation acts, 273; disapproves slave-trade arrangement, 304; thinks states should regulate their own manufactures, 322; favors commercial regulations, 327; moves to postpone ratification question, 346; favors ratification by a majority of the people and the states, 349; objects to Senate's power, 383; thinks old Congress need not sanction constitution, 419.
Commercial regulations. *See* Navigation acts.
Committee, grand, appointed, iv., 233.
Committee of the whole, convention goes into, iii., 37; reports, 160; last session, 198.
Committee on detail, resolutions referred to, iv., 82; report of, 92; debated, 109.
Committee on plan of compromise, appointed, iii., 350; reports, 352.
Committee on rules, appointed, iii., 5; reports, 7.
Committee on style and arrangement, appointed, iv., 411; report of, 422, 448; debated, 445, 447.
Committee on sumptuary legislation, appointed, iv., 445.

Compensation of executive. *See* Executive, national, compensation of.
Compensation of judiciary. *See* Judiciary, national, compensation of.
Compensation of legislature. *See* Legislature, national, compensation of.
Compromise on representation, debate on, iii., 344; report of committee on, 352.
Confederation, articles of. *See* Articles of Confederation.
Congress. *See* Legislature, national.
Constitution, engrossed, read, iv., 472; text of, 482.
Continental Congress, continuance of, till constitution goes into effect, proposed, iii., 93; agreed to, 164; debate on, 468.
Contracts, impairment of, prohibited, iv., 458.
Copyright law. *See* Legislature, national, power of.
Council, executive. *See* Executive council.
Council of revision of laws, debate on, iii., 81; iv., 21.
Counterfeiting, power to punish, debated, iv., 223.
Courts. *See* Judiciary.
Credentials of delegates read, iii., 5.

D

Davie, William Richardson, N. C., attends convention, iii., 2; Pierce's sketch of, 77, n.; opposes unequal representation in Senate, 334; on committee on compromise on representation, 350; insists that blacks be included in basis of representation, 411; favors impeachability of executive, iv., 13; proposes eight years' term for executive, 52.
Dayton, Jonathan, N. J., attends convention, iii., 238; opposes compensation of Senators by state legislatures, 294; Pierce's sketch of, 294, n.; favors voting in House by states, 302; favors equal representation in Senate, 338; insists on equality of small states, 428; favors representation by free inhabitants, iv., 137; thinks a standing army necessary, 236; proposes mixed control of militia, 280, 281; thinks judiciary will decide controversies between states, 293; opposes election of executive by joint ballot, 294; moves election of executive by states, 296; on committee of August 25, 308; thinks tranquillity of states should be guaranteed, 343; moves ratification by ten states, 349; moves that treaties be made without two-thirds of Senate, 405; objects to state export duties, 443.
Debt, national, report on, iv., 253; debate on, 254; proposition for settling, 255; provision for payment of, 274, 288; reconsideration of, proposed, 292; motion to make payment obligatory, debated, 302. *See* Legislature, national, power of.
Delaware, increase in representation of, moved, iv., 460.
Detail, committee on. *See* Committee on detail.
Dickinson, John, Del., attends convention, iii., 13; moves removability of executive by state legislatures, 73; Pierce's sketch of, 73, n.; favors separation of branches of government, 75; favors institution of inferior judiciary, 98; favors election of Representatives by people, 105; favors negative over laws by executive, 111; moves that Senators be elected by legislatures, 112; thinks Senate should resemble House of Lords, 112; thinks preservation of states necessary, 115; favors negative by legislature over state laws, 125; favors representation by wealth, 137; proposes postponement of Jersey plan, 182; proposes amend-

Dickinson (*Cont'd*).
ment of articles of confederation, 182; favors three years' term for Representatives, 247; favors election of executive by the people, iv., 67; opposes property qualification for legislature, 75; favors restriction of suffrage to freeholders, 117; proposes — years' residency for Representatives, 131; thinks provision as to money bills should stand, 187; proposes fixed payment for members of legislature every twelve years, 204; moves both branches of legislature receive the same pay, 205; thinks judiciary should not have power to set a law aside, 210; moves that rebellion against government be suppressed, 226; appointed on grand committee, 233; thinks great appointments should be made by legislature, 235; thinks treason should be defined, 247; thinks war against one state the same as against all, 251; moves that representation of large states be limited, 254; favors power over exports, 260; on committee on navigation acts, 273; thinks President should share in treaty-making power, 290; moves executive have power to appoint to future offices, 299; moves executive appoint officers not to be appointed by states, 299; moves to permit slave trade in states permitting it, 304; favors postponement of question of executive succession, 310; thinks legislature will not improperly ask removal of judges, 312; moves that judiciary have equity power, 315; explains meaning of *ex post facto* laws, 325; thinks small states should not secure claims of large states, 335; moves that legislatures consent to formation of new states, 340; thinks tranquillity of states should be guaranteed, 342, 343; asks if Congress is to concur in constitution, 345; on committee of August 31, 354; thinks eventual election of President should be with whole legislature, 376; moves that vote of presidential electors be from all who are appointed, 378; favors an executive council, 402; objects to state export duties, 444; on committee on sumptuary legislation, 445; moves to strike out "direct taxes," 446.
Duties on exports. *See* Exports.
Imports. *See* Imports.

E

Election, of executive. *See* Executive, national, election of.
Of Representatives. *See* Legislature, national, House of Representatives, election of.
Of Senators. *See* Legislature, national, Senate, election of.
Electors. *See* Executive, national, election of.
Ellsworth, Oliver, Conn., attends convention, iii., 5; Pierce's sketch of, 144, n.; opposes ratification by conventions, 226; favors one-year term for Representatives, 247; favors payment of Representatives by states, 250; favors payment of Senators by states, 293; favors election of Senators by legislatures, 279; favors equal state representation in Senate, 322, 329, 341; on committee on compromise on representation, 350; favors compromise on representation, 361; opposes increase in representation, 390; favors free inhabitants and three-fifths of slaves as basis of taxation, 412; favors representation by free inhabitants and three-fifths slaves, 413; opposes adjustment of taxation and representation after census, 418; insists upon state equality in Senate, 436; moves election of executive by electors appointed by legislatures, iv.,

Ellsworth (*Cont'd*).
9; favors six years' term for executive, 11; moves increase in electors of New Hampshire and Georgia, 12; favors inclusion of judiciary in revisionary power, 22; favors appointment of judges by Senate with power negative of appointment by executive, 33; favors ratification of constitution by state legislatures, 37, 41; favors voting per capita in Senate, 46; favors re-eligibility of executive, 51; on committee to report constitution, 58; moves election of executive by legislature and re-election by electors named by state legislatures, 59; opposes election of executive by the people, 63; opposes disqualification of public debtors from legislature, 79; thinks time of meeting of legislature ought to be fixed, 112; thinks legislature ought to meet in winter, 115; thinks question of suffrage should be left to states, 117; thinks suffrage should be liberal, 118; thinks Representatives should reside in their states, 131; moves that Representatives be residents of their states for a year, 132; thinks ratio of Representatives to inhabitants may change, 135; thinks originating money bills in House unimportant, 139, 143; thinks state executives should fill vacancies in Senate, 141; opposes fourteen years' citizenship for Senators, 146; proposes one-year term for Representatives, 148; thinks property qualification for members of government should not be fixed, 157, 158; thinks number for quorum should not be small, 162; thinks no provision necessary for yeas and nays, 164; thinks provision for journal unnecessary, 167; favors ineligibility of members of legislature to other offices, 199; favors national compensation for members of legislature, 201; thinks members of legislature may fix their pay, 204; moves $5 per day as payment for legislature, 205; urges necessity of reaching a decision, 212; thinks exports should not be taxed, 216; opposes power to emit bills of credit, 220; moves to enlarge power over piracies, felonies, etc., 225; thinks executive should have power to suppress rebellion in a state, 225; defines power of making war and peace, 228; thinks state debts may be assumed by nation, 232; urges consideration of President's council, 234; thinks states should have partial control over militia, 237, 238; thinks power of taxation includes sumptuary power, 245; thinks treason sufficiently defined, 246, 248, 251; moves census in three years, 252; moves report on state debts lie on table, 254; thinks adjustment of debts necessary, 255; thinks taxation by representation unjust, 256; thinks states may tax exports, 258; thinks an embargo permissible, 261; thinks slave trade a question for the states, 265, 267; favors accepting constitution as it stands, 273; thinks prohibition of *ex post facto* laws unnecessary, 276; thinks requirement of fulfilment of old government's engagements unnecessary, 277; favors national power to train militia, 279; proposes mixed control of militia, 280; opposes national negative of state laws, 287.

Emancipation. *See* Slavery.

Embargo, power to lay, debated, iv., 260, 261; by states, debated, 320.

Executive council, proposed, iii., 80; debated, iv., 234, 401, 402.

Executive, national, debate on, iii., 57; provisions reconsidered, iv., 9; referred to committee on detail, 68; vote on, 72.

Executive (*Cont'd*).
Age, nativity, and residence of, agreed to, iv., 395.
Compensation of, Franklin proposes no salary, iii., 67, iv., 463; mode of payment, 20.
Correspondence of, with states, debated, iv., 301.
Election of, proposed by district electors, iii., 65, 66; by national legislature for seven years, proposed, 67; mode of, reconsidered, 62, 120, 127, 128, iv., 54, 56, 57, 59, 64, 65; by state conventions, proposed, iii., 130; by national legislature, 450, 454, 455, iv., 49, 51, 67, 294; by electors chosen by state legislatures, iii., 454, iv., 10; ratio of electors considered, 12; electors not to be officials, 20; by electors, debated, 47, 48, 361, 365, 373, 388, 391; term of electors debated, 57; re-election of electors considered, 63; regulations as to age and residence debated, 274; by states, proposed, 296; by electors, defeated, 297; when to take place, proposed, 352; to be at seat of government, proposed, 385; how vote is to be counted, debated, 385; to fill vacancy, considered, 463; verbal amendment of clause, 465.
Eligibility of, to re-election, debated, iii., 77, 455, 460, iv., 1, 10, 49, 51.
Exclusion from, of those indebted to government, considered, iv., 74.
Foreign ambassadors to be received by, iv., 308.
Impeachability of, agreed to, iii., 77; method of, debated, 462, 463, iv., 13, 19, 20, 407, 409; moved to postpone question, 19; House to have power of, 140.
Militia to be commanded by, when in active service, iv., 309.
Native citizens only to be eligible, iv., 363.
Negative of, on national legislation, debated, iii., 63, 82, 88, 461, iv., 210, 212, 438; qualified, agreed to, iii., 89, iv., 31; inclusion of judiciary in, proposed, iii., 89; absolute, debated, iv., 15; ten days allowed for, 213; agreed to, 213; moved to extend to resolutions, 213.
Oath of, prescribed, iv., 310.
Power of, debated, iii., 61, 62, 68, 108, 455, iv., 20, 21, 298, 308, 363; to make appointments, iii., 455, iv., 298, 398, 399, 406, 465; to revise legislation, 21, 31, 298; to pardon criminals, 308, 463; to make treaties, 397, 399; to demand opinions of heads of departments, 401; to convene either house of legislature, 410.
Removability of, on request of state legislatures, debated, iii., 73, 76; question postponed, iv., 310; debated, 363.
Single, proposed, iii., 60, 77, 81; agreed to, 450, iv., 294; debate on, 50.
Succession in, debated and postponed, iv., 310.
Term of, debated, iii., 63, 162, 455, iv., 11, 52, 71, 72, 97; seven years', proposed, iii., 64, 455, 460, iv., 11, 384; during good behavior, proposed, iii., 459; six years', proposed, iv., 11, 384; six years in twelve, proposed, 68.
Expenditures of government, moved that an account of, be published, iv., 456, 457.
Expenses of convention, provision for, iv., 368, 372.
Exports, tax on, debated, iv., 214, 258, 308; state power to tax, debated, 322, 442.
Ex post facto laws. *See* Legislature, national, power of.
Expulsion from legislature. *See* Legislature, national, expulsion from.

F

Federal or national government, debate on, iii., 38.
Felonies. *See* Piracies and felonies.

Few, William, Ga., attends convention, iii., 2; Pierce's sketch of, 2, n.; on committee of August 25, iv., 308.
Fitzsimmons, Thomas, Pa., attends convention, iii., 1; favors restriction of suffrage to freeholders, iv., 116; opposes power to tax exports, 262; on committee of August 25, 308; admits inconvenience to require vessels to enter and clear in their own state, 353; seconds motion to include House of Representatives in treaty-making power, 397; thinks old Congress need not sanction constitution, 416; favors incidental state export duties, 444; thinks publication expenditures impossible, 457.
Forts, arsenals, etc., provision for acquisition of, iv., 371.
Franklin, Benj., Pa., attends convention, iii., 5; Pierce's sketch of, 57, n.; moves that executive receive no salary, 67; opposes negative in executive, 82; favors executive council, 83; opposes single executive, 87; suggests method for choosing judges, 91; appeals for harmony in convention, 138; favors proportional representation, 138; objects to liberal compensation for legislature, 151; favors no salary for Senators, 292; thinks voting in Senate not a separate question, 309; proposes prayers in convention, 309; favors compromise on representation, 335; on committee on compromise on representation, 350; thinks money bills should originate in House, 373; favors power to increase judges' salaries, 466; favors impeachability of executive, iv., 14, 18; thinks executive returning to private life no degradation, 71; favors general suffrage, 121; thinks compromise on representation should stand, 143; opposes long residence in the states for Senators, 147; thinks new citizens will not be elected to Senate, 151; opposes property qualification for officers of government, 157; thinks two witnesses necessary in treason cases, 249; favors executive council, 402; seconds motion for second convention, 421; on committee on sumptuary legislation, 445; moves legislature have power to cut canals, 452; moves to limit President's emoluments, 463; proposes plan for signing constitution, 472; disclaims personal reflections on non-signatories, 479; thinks members cannot pledge themselves, 481; remarks on signing, 482.
Franklin, William Temple, nominated for secretary of convention, iii., 4.

G

General-welfare clause. *See* Legislature, national, power of.
Georgia, increase in representation of, moved, iii., 389.
Gerry, Elbridge, Mass., attends convention, iii., 13; doubts if convention can form national government, 39; Pierce's sketch of, 39, n.; opposes election of Representatives by the people, 46, 49, 99; favors an executive council, 59; opposes election of executive by national legislature, 66; opposes inclusion of judiciary in council of revision, 81, 110; favors single executive, 81; favors qualified negative on legislation by executive, 82; favors provision for amendments, 94; opposes ratification of constitution by the people, 95; favors election of Senators by state legislatures, 115, 118; moves reconsideration of question of choosing executive, 120; moves indefinite negative on state laws by national legislature, 122; moves election of executive by state executives,

Gerry (*Cont'd*).
128, iv., 59; favors representation based on free population, iii., 143; opposes requiring oath to national government from state officers, 146; favors one-year term for Representatives, 148; proposes that Senate shall not originate money bills, 158; thinks maximum and minimum for quorum should be fixed, 163; favors ineligibility of Representatives to other offices, 263, 267; opposed to monarchy, 290; favors four or five years' term for Senators, 290; opposes equal state representation, 320; favors committee to compromise representation, 350; on committee to arrange compromise on representation, 350; offers report of committee of compromise on representation, 352; favors compromise on representation, 362; favors representation on basis of population and wealth, 366; thinks originating money bills in House a concession, 372; moves to postpone question of voting in Senate, 375; favors increase in representation, 391; thinks three-fifths of blacks sufficient proportion as basis of representation, 397; thinks taxation and representation cannot be arranged, 416; favors direct taxation according to representation, 417, 420; favors originating money bills in House, 427; favors compromise on representation in Senate, 429; opposes adjournment on question of representation, 442; opposes re-eligibility of executive, iv., 8, 51, 52; favors election of executive by electors appointed by state legislatures, 9; moves ratio for electors for executive, 12; favors impeachability of executive, 16; moves that electors for executive be not officials, 20; opposes inclusion of judiciary in revisionary power, 24, 29; favors appointment of judges by Senate, 34; moves that officers take oath of allegiance, 36, 37; thinks constitution should be ratified by legislatures, 39; moves appointment of committee to report constitution, 48; moves election of executive by legislatures, 51; suggests fifteen years' term for executive, 52; proposes referring term of executive to committee, 53, 68; opposes election of executive by electors chosen by lot from national legislatures, 57; favors election of executive for not more than six years in twelve, 64; opposes popular election of executive, 66; favors exclusion from office of those indebted to government, 74, 78; favors exclusion from legislature of pensioners, 79; favors prohibiting state and national capital at same place, 81; thinks quorum should be fixed, 162; moves to permit Senate to publish journal, 165, 166; thinks executive should not influence place of meeting of legislature, 169; thinks none but natives should be Representatives, 172; declares his state opposes members of legislature holding any other offices, 194; points out objections to both national and state legislatures, 203; thinks exports should not be taxed, 217; moves to include post roads in power of legislature, 219; thinks rebellion should be suppressed on state application, 226; moves legislature have power to declare war, 227; favors giving legislature power to make peace, 228; thinks letters of marque should be considered, 231; thinks executive should not interfere in legislation, 235; favors provision against large army in time of peace, 235, 236, 239; moves committee be instructed to report on quali-

Gerry (*Cont'd*).
fications for executive and impeachment of judges, 244; opposes power to make sumptuary laws, 245; moves that taxation be by congressional representation, 252, 256; thinks states should pay their debts, 254; opposes power to tax exports, 261; thinks slave trade should not be sanctioned, 269; moves prohibition of *ex post facto* laws and bills of attainder, 275; thinks government should have power to fulfil engagements of old government, 278; thinks national government should not control militia, 279; thinks liberty will not be as safe in national as state government, 281; warns convention against depriving states of their powers, 283; thinks actual debts should be paid, 301; seconds motion to remove judges on application of legislature, 311; moves to postpone question of ratification, 350, 351; thinks members of legislature should not hold other offices, 358; objects to appropriations for army for more than one year, 370; objects to power to buy forts, etc., 370; moves to reconsider four articles, 372; objects to powers given President, 373; objects to less than majority electing President, 377; suggests eventual election of President by six Senators and seven Representatives, 377; seconds motion to permit Senate to choose President from three candidates, 378; moves that electors be not office-holders, 379; moves change of clause for re-electing President, 379; moves that states vote for President in legislature with at least three members, 394; withdraws motion, 395; objects to Vice-President being President of Senate, 395; thinks President will not be responsible for his appointments, 398; thinks 'treaties of peace must be carefully guarded, 401; thinks it dangerous to put too much power in Senate, 405; moves two-thirds vote of Senate for treaties, 405; seconds motion for majority for treaties of whole number of Senators, 406; proposes that notice of treaties to Senators be required, 406; moves no appointments be allowed except as authorized by law, 406; thinks impeachability of President should be extended, 407; moves legislature have sole right to create offices, 410; moves reconsideration of provision for amendments, 412; seconds motion for states' consent to amendments, 414; moves sanction of old Congress to constitution be asked, 415; thinks ratification should be made difficult, 417, 420; seconds a plan of ratification, 418; favors two-thirds vote to override President's negative, 439; urges clause requiring jury trials, 441; moves bill of rights be prepared, 442; moves that all proceedings of House be published, 450; approves prohibition of *ex post facto* laws, 455; moves liberty of press be guaranteed, 455; seconds motion for annual publication accounts, 456; moves prohibition of violation of contracts, 458; moves jury trial be preserved in civil cases, 466; moves verbal amendment relative to admission of states, 466; moves convention be required to make amendments, 468; favors a second constitutional convention, 471; defends action in not signing constitution, 480; refuses to sign, 483.

Gilman, Nicholas, N. H., attends convention, iv., 36; Pierce's sketch of, 36, n.

Gorham, Nathaniel, Mass., attend sconvention, iii., 5; elect-

Gorham (*Cont'd*).
ed chairman committee of the whole, 37; favors national payment of Representatives, 251; Pierce's sketch of, 251, n.; opposed to ineligibility of Representatives to other offices, 256; favors compromise on representation, 277; opposes readjustment of land cession, 278; favors four years' term for Senators, 282; moves six years' term and rotation for Senators, 284; thinks small states equally interested with large states in union, 313; favors representation by population, 365; on committee to arrange representation, 368; defends report on representation, 382; thinks standard of representation should be fixed, 401; favors population as basis of representation, 407; opposes defining legislature's powers, 440; favors appointment of judges by Senate, 461; favors appointment of judges by the people, 462; favors appointment of judges by executive, 464; moves appointment of judges by executive with consent of Senate, 465; favors institution of inferior judicial tribunals, 467; favors power to suppress insurrections, 470; opposes inclusion of judiciary in revisionary power, iv., 22, 30; thinks oath of allegiance no bar to amendments to constitution, 37; opposed to ratification of constitution by legislatures, 40; favors two Senators from each state, 46; on committee to report constitution, 58; favors prohibition of national capital at state capital, 81; thinks constitution should fix time of meeting of legislature, 112; favors voting by non-freeholders, 128; thinks the new government will not last, 135; thinks Senate should not originate money bills, 138; thinks mode of electing Representatives should not be left to state legislatures, 152; thinks less than a majority may be a quorum of legislature, 160; thinks yeas and nays need not be required, 165; thinks provision concerning citizenship need not be retroactive, 176; thinks Senate should be paid more than House, 205; insists that money bills originate in House, 206; urges necessity for action, 211; opposes power to emit bills of credit, 219, 220; moves appointment of treasurer by joint ballot of legislature, 222; favors national support of army, 235; thinks adjustment of debts may be left to national legislature, 255; thinks union only of commercial advantage, 272; suggests difficulties of ratifying treaties by legislature, 289; thinks treaties should be negotiated in this country, 292; doubts if judiciary can impartially decide controversies between states, 293; favors election of executive by joint ballot of legislature, 294; seconds motion to extend period of slave trade, 303; thinks duty on slaves may discourage importation, 305; thinks precaution against discrimination in ports of entry unnecessary, 307; on committee of August 25, 308; thinks prohibition of paper money dangerous, 318; favors article providing for validity of state acts, 324; on committee on interstate acts, 325; thinks New England's motive for union dependent on commercial arrangements, 331; favors convention for ratification, 348; thinks vessels should not be obliged to enter and clear in their own states, 353; thinks members of legislature may be eligible to other offices, 358; thinks majority of Senate may elect President, 386; thinks separate provision for treaties of peace unnecessary, 400;

Gorham (*Cont'd*).
thinks treaties need not require two-thirds of Senate, 405; opposes conditional ratification, 416; thinks jury question need not be included, 441; objects to state export duties, 443; thinks legislature should choose treasurer, 450; thinks provision as to jury trials unnecessary, 466; urges additional representation, 476.
Grand committee. *See* Committee, grand.
Grayson, William, to Madison, iii., 5, n.; to Monroe, 36, n.

H

Habeas corpus, necessity for preserving right of, debated, iv., 317.
Hall, Levi, signs address from Rhode Island, iii., 12, n.
Halsey, Thomas Lloyd, signs address from Rhode Island, iii., 12, n.
Hamilton, Alexander, N. Y., attends convention, iii., 1; nominates William Jackson for secretary of the convention, 4; Pierce's sketch of, 4, n.; on committee on rules, 5; moves representation by free inhabitants, 42; favors absolute negative of executive on legislation, 82; moves proportional voting in Senate, 144; presents his plan of government, 182; explains views on powers of the states, 221, 225; opposes election of Representatives by state legislatures, 244; favors three years' term for Representatives, 249; opposes fixing compensation for Representatives, 253; opposes ineligibility of Representatives to other offices, 257, 267; favors centralized government, 288; opposes prayers in convention, 311; writes to Washington about public sentiment, 351, n.; thinks citizenship and inhabitancy alone necessary for Representatives, iv., 173; thinks President may be elected by a plurality of electors, 383; appointed on committee on style and arrangement, 411; favors increase in representation, 411; favors easily made amendments, 412, 414; thinks old Congress should sanction constitution, 415; thinks constitution will be effective if ratified by nine states, 416; moves a plan for ratification, 418; withdraws it, 420; favors two-thirds vote to override President's negative, 439; urges members to sign constitution, 478.
Hamilton plan, presented, iii., 182; provisions of, 194; text of, 197, n.
House of Representatives. *See* Legislature, national, House of Representatives.
Houstoun, William Churchill, N. J., attends convention, iv., 1.
Houstoun, William, Ga., attends convention, iii., 56; moves increase in representation of Georgia, 389; opposes continuance of existing state constitutions, 470; favors additional representation of electors for New Hampshire and Georgia, iv., 13; moves consideration of appointment of executive by electors, 47; Pierce's sketch of, 47, n.; moves election of executive by national legislature, 49.

I

Impeachment, of executive. *See* Executive, national, impeachability of; Legislature, national, Senate.
Of judiciary. *See* Judiciary, national, impeachment of.
Of national officers, provision for, struck out, iii., 468; to be suspended during trial, iv., 449.
Trials of, debated, iii., 462, 463, iv., 314, 315, 361, 410.
Imports, power of states to tax, debated, iv., 320, 401; duties

Imports (*Cont'd*).
on, uniformity of, agreed to, 354, 451.
Indians, power to legislate for, proposed, iv., 274.
Ingersoll, Jared, Pa., attends convention, iii., 5; considers signing to be recommending constitution, iv., 481; Pierce's sketch of, 481, n.
Insurrections, power to suppress. *See* Republican government, guaranty of.

J

Jackson, William, nominated for secretary of convention, iii., 4; elected, 5.
Jay, John, writes Washington against foreigners, iv., 59, n.
Jefferson, Thomas, Monroe to, iv., 69, n.; Madison to, 152, n., 389, n.
Jenckes, John, signs address from Rhode Island, iii., 2, n.
Jenifer, Daniel, of St. Thomas, Md., attends convention, iii., 65; favors three years' term for Representatives, 148; Pierce's sketch of, 148, n.; favors ineligibility of Representatives to other offices, 266; moves postponement of question of voting in Senate, 269; favors requirement that vessels must enter and clear in their own states, 353.
Jersey plan, the, submitted, iii., 165; text of, 166; vote on, 220.
Jews, letter of, iv., 391, n.
Johnson, William Samuel, Conn., attends convention, iii., 65; suggests compromise between Virginia and Jersey plans, 239; Pierce's sketch of, 239, n.; favors elections to Senate by state legislatures, 280; favors representation by states in Senate, 312; favors inclusion of blacks in basis of representation, 411; thinks treason should be defined, iv., 247; thinks there can be no treason against a state, 248; on committee on navigation acts, 273; thinks prohibition of *ex post facto* laws unnecessary, 277; thinks double control of treaties difficult, 290; thinks judiciary will decide controversies between states, 292; thinks obligations of old government binding on new, 302; suggests judiciary have power over equity cases, 311; moves extension of judicial power to cases arising under the constitution, 314; thinks acts of one state valid in courts of another state, 324; on committee on interstate acts, 325; thinks states cannot be dismembered, 335; moves admission of states hereafter formed, 338; thinks legislature may declare effect of state acts in states, 356; appointed on committee on style and arrangement, 411; submits report, 421; favors provision for sumptuary legislation, 445; on committee on sumptuary legislation, 445; offers further report of committee on style and arrangement, 447.
Jones, Joseph, writes to Madison, iv., 444, n.
Journal of legislature's proceedings. *See* Legislature, national, journal of, House of Representatives, Senate.
Journals of convention, disposition of, iv., 481, 482.
Judiciary, national, supreme, agreed to, iii., 90; consideration of, postponed, 156; debated, 461.
Appointment to, debated, iii., 90, 157, 163, 461, iv., 31; by legislature, vote on, iii., 92; by Senate, agreed to, 158; by executive, vote on, 464, iv., 35; by executive with consent of Senate, debate on, iii., 465; exclusion from, of those indebted to government, iv., 74, 285.
Compensation of, fixed, agreed to, iii., 465; power to increase, vote on, 467; debated, iv., 313.

Judiciary (*Cont'd*).
Impeachment of, trial by Senate proposed, iv., 275.
Impeachment power of, struck out, iii., 468; debated, iv., 315.
Inferior tribunals, debate on instituting, iii., 96, 98, 99, 467, 468, iv., 223; power of legislature to refer cases to, struck out, 315.
Jurisdiction of, debated, iii., 155, 156, 163, 468, iv., 275; over controversies between states, debated, 292; to cases in equity proposed, 311; over controversies in which United States is a party, debated, 314; to cases arising under the constitution, debated, 314; appellate, debated, 315, 316; to be directed by legislature, proposed, 315; extension of, to land grants proposed, 316; to land claims, 341, 342; to impeachment trials proposed, 407, 408.
Negative of, inclusion with executive proposed, iii., 81, 89, 108, 111; over state laws, debated, 449; debated, iv., 210, 311.
Revisionary power of, debated, iii., 81, iv., 21, 208
State, power of, over national laws, debate on, iii., 447; will be bound by national laws, 449.
Tenure of, iii., 92, 465, iv., 311.
Jury trial, right of, provided for, iv., 317; in civil cases debated; 441; motion to preserve, 446.

K

King, Rufus, Mass., attends convention, iii., 1; objects to report of committee on rules, 6; Pierce's sketch of, 6, n.; opposes representation by quotas of contributions, 42, 137; notes of proceedings of convention, 45, n.; opposes election of Senators by state legislatures, 51; opposes inclusion of judiciary in council of revision, 81; favors ratification of constitution by conventions, 95; moves question of proportional representation, 137; thinks Senate should have power to originate money bills, 159; opposes sovereignty of the states, 221, 341; insists upon election of Representatives by the people, 246; favors national compensation for Representatives, 252; opposes ineligibility of Representatives to other offices, 256, 262; thinks New Hampshire deputies will attend, 326; favors proportional representation in Senate, 337, 429; thinks representation cannot be permanently fixed, 366; on committee on question of representation, 368; thinks slaves should count in representation, 386; brings in report of committee on representation, 386; thinks representation of the south too large, 387; defends report on representation, 387; opposes inclusion of three-fifths of blacks in representation, 406; opposes representation by population, 414; opposes ineligibility of executive to re-election, iv., 6, 52; opposes short term for executive, 11; opposes impeachability of executive, 16, 18; favors ratification of constitution by legislatures, 43; moves voting in Senate per capita, 45; favors election of executive by state legislatures, 51; proposes term of twenty years for executive, 52; opposes election of executive by electors chosen by lot from legislature, 57; opposes freehold qualification for electors, 74; thinks legislature need not meet annually, 113; thinks representation should exclude slaves, 133; opposes leaving time and mode of election of Representatives to state legislatures, 154; thinks less than a majority should be a quorum of

King, (*Cont'd*).
legislature, 161; thinks lowest number for a quorum may be fixed, 162, 163; thinks legislature should not have power to change place of meeting, 167; thinks state debts should be assumed by nation, 232, 233; thinks state lands ought to be given up, 233; appointed on grand committee, 233; thinks states may punish treason under a different name, 248; thinks national government should punish for treason, 250; thinks treason against a state same as against nation, 251; thinks slaves should be taxed, 270; on committee on navigation acts, 273; explains provisions as to militia, 280; admits duty on slaves part of compromise agreement, 305; moves to prohibit states from violating private contracts, 319; moves to prohibit states from taxing exports, 322; thinks states should regulate their own manufactures, 321; thinks all the states must ratify constitution, 346; moves that only states ratifying be operated on by constitution, 346; thinks constitution must be ratified by conventions, 347; thinks state constitution no bar to ratification, 348; on committee of August 31, 354; moves ineligibility of members of legislature to offices created during their term, 357, 360; moves to obtain consent of state legislatures to purchases of lands for national purposes, 372; thinks eventual election of President will be with Senate, 377; moves that electors be not office-holders, 379; favors change of clause relative to re-election of President, 380; moves increase of number necessary to elect President, 387; thinks Senate may share in appointments, 398; objects to participation of two-thirds of Senate in treaties, 400; opposes special provision for treaties of peace, 403; moves special provision for treaties affecting national rights, 403; thinks old Congress should consider constitution, 407; on committee of style and arrangement, 411; thinks old Congress need not sanction constitution, 419; thinks President ought not to be suspended if impeached, 449; thinks legislature should choose treasurer, 450; thinks power to grant charters unnecessary, 453; thinks publication of public expenditures impossible, 456; opposes change in representation, 459; thinks executive may pardon for treason, 464; thinks guaranty of jury trials not necessary, 466; urges additional representation, 476; proposes journals of convention be disposed of, 481.

Knox, General Henry, writes to Washington on prospects of convention, iv., 191, n.

L

Land cession, question of, iii., 278.

Lands, public. *See* Legislature, national, power of.

Langdon, John, N. H., attends convention, iv., 36; opposes disqualification from legislature of persons having unsettled accounts, 78; Pierce's sketch of, 78, n.; opposes prohibition against placing national capital at state capital, 81; favors national compensation of legislature, 202; opposes power to emit bills of credit, 221; favors suppression of rebellion without state's consent, 226; appointed on grand committee, 233; thinks representatives must be trusted, 236; thinks national control of militia necessary, 238; opposes taxation by congressional representa-

Langdon (*Cont'd*).
tion, 253; asks only fair representation for New Hampshire, 257; objects to state power to tax exports, 258, 260; opposes leaving slave trade to states, 271; moves to commit question of navigation acts, 272; on committee on navigation acts, 273; thinks state and national governments need not be jealous, 281; favors national power of negative on state laws, 288; thinks executive should be elected by joint ballot of legislature, 295; thinks creditors of government should not be disturbed, 301; admits duty on slaves is part of compromise agreement, 305; on committee of August 25, 309; doubts if new states should be admitted on an equality with old, 333; thinks new states may be created, 335; thinks Vermont should be brought into the Union, 335; thinks vessels should not be made to enter and clear in their state, 353; objects to export duties by states, 443; moves increase in representation of North Carolina and Rhode Island, 459; thinks commercial regulations should be national, 462.

Lansing, John, N. Y., attends convention, iii., 65; Pierce's sketch of, 165, n.; supports Jersey plan, 171; opposes Virginia plan, 227; opposes legislature of two branches, 227; favors voting in House by states, 302; leaves convention, 356, n.

Legislature, national, acts of, may originate in both houses, iii., 296, iv., 206; enacting style, 206.

Compensation of members, considered, iii., 150, 250, 292, 293; to be fixed, 151; and eligibility to re-election, debated, 155; to be ascertained by members, 253; by state legislatures, 254; vote on, 259; agreed to, 282; debated, iv., 201, 205.

Constitution of, considered, iv., 10; agreed to, 116.

Disqualification of debtors from, debated, iv., 77, 79, 80; of pensioners from, 79; of persons having unsettled accounts with, 79; of members from other offices, 191, 357, 360, 450.

Elections to, by popular vote, debated, iii., 62; mode of, debated, 96, 161; eligibility to re-election, debated, 152; eligibility of state officers to, 152.

Expulsion from, debated, iv., 163, 164.

Journal of proceedings, debate on, iv., 164, 166, 449.

Money bills in, originating of, debated, iii., 370, 374, iv., 180, 185, 190, 255, 257.

Negative of, on state laws, considered, iii., 55, 120, 127, 447, 449; on acts of executive, vote on, iv., 115; debated, 438; verbal amendment offered, 446.

Place of meeting, debated, iv., 168.

Power of, debated, iii., 53, 162, 440, iv., 214; coercion on delinquent states, iii., 55; to legislate where states not competent, 55, 446, 447; over state police, 445, 446; over state judiciary, 449, 450; members of, in debate, iv., 163; expulsion of members of, 163; to compel attendance of members, 163; to judge of elections of members, 163; to adjourn, 167; limits of, debated, 208, 209; to regulate captures, debated, 223; over Indians, debated, 274; over general welfare, proposed, 274; to pass *ex post facto*

Legislature (*Cont'd*).
laws and bills of attainder, prohibited, 275, 455; to fulfil engagements of old Congress, debated, 277, 288; over militia, debated, 278, 285; to enforce treaties, debated, 285; negative on state laws, debated, 286; to pass tax laws, debated, 292, 451; to pay public debts, debated, 300, 361; to regulate ports of entry, 306; to refer appointments to state legislatures, 308; to pay debts with anything but coin, debated, 318; report of committee of eleven taken up, 326; over public lands, proposed, 340, 342; to make national bankruptcy law, debated, 356; to judge privileges of members, 369; to grant letters of marque and reprisal, 369; to govern seat of government, 370; to grant copyrights, 370; to create offices, proposed, 410; to appoint treasurer, debated, 452; to punish piracies, etc., debated, 451; to make canals, proposed, 452; to grant charters, proposed, 452; to establish a university, proposed, 453; to be limited in providing for standing army, 454.

Property qualifications for members of, debated, iv., 72, 77, 155, 159, 177.

Qualifications for members of, debated, iii., 49, iv., 159.

Quorum in, debated, iv., 160, 193, 214.

Representation in, debated, iii., 41, 130, 136, 143, 166, 277, 362, 392, 500, 406, 409, 411, iv., 133, 138; compromise proposed, iii., 156; enumeration of blacks and whites, debated, 500, 406, 408, 413, 415, 416, 420; question postponed, 581; referred to committee, 586; report of committee, 586; motion to increase, debated, 590; census for, debated, 593, 406, 408, 409; taxation as basis of, debated, 412, 416, 417, 446; moved that, of large states be limited, 454; increase of, debated, iv., 386, 392, 459, 476.

Rules to be regulated by each house, iv., 206.

Term of members of, debated, iii., 150.

Time of meeting, debated, iv., 112, 114, 115.

Two branches of, agreed to, iii., 45, 161; debate on, 227, 238, 244.

House of Representatives, mode of election to, debated, iii., 46, 47, 49, 99, 108, 244, 267; classification of states to determine representation in, proposed, 127; term of members, debated, 148, 151; age for members, debated, 150, 255, 256; elections to, by state legislatures, proposed, 246, 247; three years' term in, proposed, 247, 250; eligibility of members to other offices debated, 256, 259, 260, 266, 267, iv., 354; committee report on representation in, iii., 581, 583; constitution of, debated, iv., 116, 365; who may vote for members of, debated, 128; seven years' citizenship for members of, proposed, 129, 159, 160; qualifications for members of, debated, 129; clause relative to, agreed to, 133; money bills to originate in, debate on, 138, 370, 409; power of impeachment of, agreed to, 140; time and mode of election to, debate on, 152, 154; power of, over elections in states, debated, 155; citizenship and residence for members, debated, 173, 175; four years' citizenship for members of, proposed, 175; nine years' citizenship for members

Legislature (*Cont'd*).
of, proposed, 175; citizenship requirements not to apply to those already citizens, 175, 179; five years' citizenship for members of, proposed, 179; clause for citizenship and age of members agreed to, 179; representation by direct taxation, debate on, 183; power to make bankruptcy laws, proposed, 355; power of, to make treaties, proposed, 397; increase in representation in, proposed, 411; moved to strike out apportionment by "direct taxes," 446; proposed that all journals of, be printed, 450.

Senate, mode of election to, debated, iii., 50, 278, iv., 140; to be a check on democracy, iii., 51; election to, by state legislatures, debated, 52, 112, 120, 282; elections to, by the people, debated, 119; mode of voting in, debated, 144, 280, 297, 369, 370, 375, 417; age for members of, debated, 152, 282; term of members of, debated, 153, 155, 283, 284, 291; compensation of members of, debated, 155, 292, 294, 295; originating money bills in, debated, 158, 160, 426; representation in, debated, 281, 282, 428, 437, 438, 441, 442, 443, iv., 45, 369; property qualification for members of, debated, iii., 294; eligibility of members of, to state offices, considered, 295; eligibility of members of, to any offices, considered, 296; voting in, by states, debated, 376; citizenship for members of, debated, iv., 150, 151; age and citizenship for members of, debated, 152, 179; moved that members of, be permitted to enter dissent to measures, 165; moved that journal of, be published, 165, 166; choosing officers of, agreed to, 218; power of appointment by, 285, 289; treaty-making power of, debated, 289, 291; power of, to appoint ambassadors, etc., considered, 291; power of, in controversies between states, considered, 292; power to try impeachments, proposed, 361; power of, objected to, 382; to vote on President, 386; power of, in treaty making, debated, 397, 399; in appointments, 398; quorum of, debated, 406; power of, in impeachment of President, debated, 407, 408; power of, to amend money bills, 409; to be under oath in impeachment trials, 410.

Letters of marque, power to issue, debated, iv., 231.

Liberty of the press, guaranty of, proposed, iv., 455.

Livingston, William, N. J., attends convention, iii., 90; appointed on grand committee, iv., 233; Pierce's sketch of, 253, n.; delivers report on state debts and militia, 253; on committee on navigation acts, 273; submits report on slave importation and navigation acts, 292; on committee on sumptuary legislation, 445.

M

Madison, James, Va., chronology of, 1787, iii., xix. iv., ix; attends convention, iii., 2; moves question of representation in legislature, 41; Pierce's sketch of, 41, n.; favors proportional representation, 41, 44, 303; favors election to House by popular vote, 48, 102; opposes district elections to Senate, 51; opposes defining powers of national legislature, 55; opposes use of force against recalcitrant states, 56; moves consideration of powers of executive, 61; opposes removability of executive on motion of state legislatures, 74; favors qualified negative of executive on legislation, 84; favors inclusion of judiciary with executive in negative on legislation, 89, 108; opposes

Madison, James (*Cont'd*).
appointment of judges by legislature, 91, 157; favors ratification of constitution by popular vote, 94, iv., 44; favors creation of inferior judicial tribunals, iii., 98; opposes elections to Senate by state legislatures, 111, 117; favors a small Senate elected by the people, 114; favors negative by national legislature of state laws, 121, 126, 448; favors three years' term for Representatives, 148; favors national compensation of members of national legislature, 150, 253; favors seven years' term for Senators, 153; moves to define jurisdiction of judiciary, 156; thinks Senate should have power to originate money bills, 159; opposes Jersey plan, 200; thinks national government in danger from state governments, 241; opposes annual elections of Representatives, 248; favors compensation of Representatives by fixed standard, 252; favors ineligibility of Representatives to other offices, 260; favors partial ineligibility of Representatives to other offices, 264; moves debate on mode of voting in Senate, 280; sets forth objects of Senate, 285; opposes compensation of Senators by state legislatures, 293; opposes equal state representation, 316, 331, 428, 437; would preserve state rights, 338; opposes compromise committee on representation in Senate, 349, 354; thinks question of representation vital, 377; suggests representation by free population in House and by free and slaves in Senate, 385; moves increase in representation of all states, 390; thinks basis of representation should be fixed, 402; favors census at least every fifteen years, 409; favors adjustment of taxation to representation, 418; favors independence of executive, 456; thinks tendency is to give executive too little power, 458; favors appointment of judges by executive and one-third of Senate, 463; moves appointment of judges by executive and two-thirds of Senate, 465; objects to power to increase judges' salaries, 466; favors continuance of old Congress to prevent interregnum, 468; favors national guaranty against domestic violence, 470; favors election of executive by the people, iv., 7; favors varying ratio for electors to choose executive, 12; favors impeachability of executive, 15; seconds motion to include judiciary in revisionary power, 22, 23, 27; moves appointment of judges by executive and Senate, 31; is willing to allow a majority of Senate to reject appointment of judges, 34; speaks on mode of election of executive, 59; thinks each voter may vote for two persons for executive, 66; thinks persons indebted to government should be excluded from legislature, 73; moves that property qualification be not confined to landed property, 75; opposes mutual negative of each branch of legislature over acts of the other, 111; suggests that time of meeting of legislature be not fixed in constitution, 112, 113; favors fixing time of meeting of legislature provisionally, 114; favors changing time of meeting of legislature from December to May, 114; favors power of suffrage by freeholders, 120; views on suffrage, 121, n.; favors requiring Representatives to be inhabitants of their states, 129; opposes proposition that Representatives be required to reside seven years in their states, 130; objects to fixed ratio of Representatives to inhabitants,

Madison, James (*Cont'd*).
134; moves representation of not more than 1 to 40,000 inhabitants, 135; opposed to originating money bills in House, 139; moves that vacancies in Senate must happen by refusals, resignations, etc., 142; thinks provision as to money bills valueless to large states, 143; opposes fourteen years' citizenship as necessary for Senators, 146; opposes leaving time and mode of electing Representatives wholly to state legislatures, 152; writes to Jefferson on progress of the convention, 152, n.; thinks property qualification for members of government should be fixed in constitution, 158, 159; moves that expulsion from legislature be by two-thirds vote, 163; moves legislature have power to compel attendance, 163; moves that Senate shall publish its legislative journal, 166; insists upon central location for capital, 168; thinks legislature should not have power to change place of meeting, 168; writes to his father, 171, n.; thinks citizenship and inhabitancy alone necessary for Representatives, 174; thinks government responsible for what states have done, 176; thinks Senate may decrease money bills, 184; thinks constitution should regulate compensation of legislature, 202; moves that laws be revised by executive and judiciary, 208; thinks power to tax exports desirable, 216; opposes power to emit bills of credit, 219; thinks punishment of piracies, etc., ought not to be fixed by legislature, 223; moves that legislature define piracies, etc., 224; moves that rebellion to be suppressed be against government, 226; moves to give legislature power to declare war, 227; submits power over public lands, Indians, seat of government, charters, copyrights, university, forts, 229; favors national control of militia, 238; moves power to create offices in legislature, 245; thinks treason should be broadly defined, 246, 247; thinks treason may be against nation and a state, 248; thinks treason should not be twice punishable, 251; thinks present representation temporary, 256; favors power to tax exports, 260; favors taxation of exports by two-thirds legislature, 263; on committee on navigation acts, 273; thinks new government should have power to fulfil engagements of old government, 278; explains provisions as to militia, 279; favors national control of militia, 281; proposes states appoint militia officers under rank of general, 283; thinks disunion the greatest danger, 283; moves to commit question of negative of state laws, 286; moves to include President in treaty-making power, 289; suggests inconvenience of legal ratification of treaties, 289; suggests varying participation of legislature in different treaties, 291; thinks larger states should have larger vote in election of executive, 295; moves extension of appointing power of executive, 298; opposes slave-trade extension, 303; opposes admitting property in men in constitution, 305; moves that treaties be supreme law, 306; thinks president of Senate should not be in executive succession, 310; moves amendment to oath of executive, 310; favors fixed salaries for judges, 313; proposes salaries of judges be not changed for three years, 314; moves judiciary have jurisdiction over cases in which U. S. is a party, 314; thinks judicial power should not extend to all cases under constitution, 314;

Madison, James (*Cont'd*).
moves verbal change in judiciary clause, 315; thinks states should not have power to interfere in private contracts, 319; thinks retrospective laws are prohibited, 319; moves states be forbidden to pass embargoes, 320; moves to forbid states to lay imposts, 320, 321; objects to imposts by states, 322; favors committing clause on state acts, 324; thinks commercial regulations not injurious to south, 329; thinks western states entitled to an equality with others, 333; opposes guaranty of public lands, 341; thinks constitution may go into operation without a majority in favor, 345; moves ratification by seven states and thirty-three Representatives, 346; thinks ratification conventions necessary, 347; thinks it inconvenient if vessels must enter and clear at their own ports, 353; on committee of August 31, 354; offers amendment strengthening interstate validity of state acts, 356; fears election of President will be thrown on Senate, 365; doubts if legislature should judge of privileges of its members, 369; thinks legislature should not participate in electing President, 375; proposes that election of President may be by one-third of whole number of electors, 376; moves that electors not voting be not counted, 378; moves that two-thirds Senate be present when voting for President, 386; shows President may be elected by two states, 387; moves that election of President by legislature when Vice-President also dies be temporary, 392; seconds motion that no state vote for President in legislature by less than three Representatives, 394; thinks some cure required to prevent minority in legislature electing President, 395; proposes treaties of peace be by majority of Senate, 400; proposes two-thirds Senate make treaties of peace without President, 400; favors executive council, 403; thinks treaties have been too easily made in past, 405; moves quorum of Senate be two-thirds, 406; thinks impeachment of President should not be on vague grounds, 407; moves supreme court try President, 407; seconds motion to increase representation, 411; thinks clause relative to amendments should be reconsidered, 413, 414; favors three-quarter vote to override President's negative, 441; favors state export duties, 443; thinks supreme court can negative state laws, 443; moves verbal amendment to clause relative to negative of bills, 446; moves words "by lot" be struck out for classifying Senators, 448; thinks President ought not to be suspended when impeached, 449; favors national charters where states are incompetent, 452; moves power to establish university, 453; favors limiting standing army, 454; moves public accounts be published from time to time, 456; writes to J. Q. Adams, 459, n.; favors national control of commercial regulations, 462; thinks Senate may participate in pardons for treason, 464; thinks superior officers may make appointments, 465; thinks legislature may propose amendments, 468; opposes special provisos in constitution, 469.
Madison, Rev. James, of William and Mary, writes to James Madison on prospects of convention, iv., 91, n.
Manufactures, encouragement of, by imposts, debate on, iv., 321; regulation of, debated, 322.
Marque and reprisal, letters of, power to grant, proposed, iv., 366.

Martin, Alexander, N. C., attends convention, iii., 2; insists upon equal power of states, 224; favors elections of Representatives regulated by state legislatures, 244; favors ineligibility of Representatives to other offices, 260; Pierce's sketch of, 260, n.; moves to postpone question of voting in Senate, 309; on compromise committee on representation, 350; moves increase in representation of North Carolina, 389; opposes fixing national capital at same place with a state capital, iv., 81; seconds motion for commercial regulations, 326.

Martin, Luther, Md., attends convention, iii., 128; opposes oath from state officers to national government, 147; Pierce's sketch of, 224; opposes legislature of two branches, 233; wishes to preserve state governments, 297, 299; insists on state sovereignty, 321, 344; favors two confederacies if states cannot have equal vote in Senate, 427; opposes national negative on state laws, 447; moves that national laws be binding on state judiciary, 449; favors election of executive by electors chosen by state legislatures, 454; moves to consider question of re-eligibility of executive, 460; favors appointment of judges by Senate, 461; opposes creation of inferior judicial tribunals, 467; opposes power in national government to suppress rebellion in states, 470; moves ineligibility of executive to re-election, iv., 10, 51; opposes inclusion of judiciary in revisionary power, 26; opposes voting in Senate per capita, 47; favors disqualification from legislature of debtors to government, 78; moves eleven years' term for executive, 52; favors state compensation of Senate, 204; asks definition of "duties" and "imposts," 214; opposes power to subdue rebellion in a state without its consent, 225; favors provision against large army in time of peace, 236; moves treason be punishable on confession, 252; proposes direct taxation by quotas from states, 257; moves that states be permitted to tax migration of slaves, 264; on committee on navigation acts, 273; favors state control of militia, 282; moves clause to prevent discrimination in ports of entry, 306; moves to restrict executive power of pardoning, 309; withdraws motion, 309; opposes requiring large states to consent to forming new states, 334; opposes admission of new states by two-thirds vote, 334; favors committing motion to require consent of states to dismemberment, 337; thinks new states should be formed without consent of old states, 338; moves that land claims be examined by supreme court, 342; moves guaranty of domestic tranquillity on state executive's application, 343; insists upon ratification by state legislatures, 348; thinks the people will not vote for constitution, 350.

Mason, George, Va., attends convention, iii., 2; objects to report of committee on rules, 7; Pierce's sketch of, 7, n.; thinks government should operate on individuals, 39; favors seven years' term for executive, 63; favors election of executive by the people, 64; opposes subordinating executive to legislature, 74; opposes single executive, 84; favors election of Representatives by the people, 101, 147, 245; favors separation of purse from sword, 110; favors election of Senators by state legislatures, 119; favors provision for amendments to constitution, 145; favors national compensation of Representa-

Mason (*Cont'd*).
tives, 150; favors two branches of legislature, 229; favors biennial elections of Representatives, 249; moves that Representatives be at least twenty-five years of age, 255; favors ineligibility of Representatives to other offices, 257, 266; opposes ineligibility of Representatives to other offices, 261; favors representation in Senate by states, 281; favors property qualification for Senate, 294; on compromise committee on representation, 350; supports report of compromise committee on representation, 362; moves to refer question of voting in Senate to committee, 369; thinks money bills should originate in House, 371, iv., 139, 143; favors an increase in representation, iii., 391; favors representation based on population, 394; thinks slaves should have proportion in representation, 398; thinks legislature ought not to fix representation, 401; thinks constitution ought to fix representation, 405; thinks taxation should be according to representation, 409; opposed to direct taxation proportioned to number of Representatives, 419; opposes election of executive by the people, 454; opposes election of executive to serve during good behavior, 458; opposes appointment of judges by executive, 462, iv., 35; favors institution of inferior judicial tribunals, iii., 468; favors guaranty of republican government to the states, 469; favors impeachability of executive, iv., 15; favors inclusion of judiciary in revisionary power, 23, 28; thinks constitution should be ratified by the people, 37; opposes three Senators from each State, 46; favors election by legislature of executive for not more than six years in twelve, 63; moves seven years' term and ineligibility for executive, 71; proposes property qualification for legislature, 72; moves to exclude from legislature debtors to United States, 72; moves that national capital be not at a state capital, 80; withdraws the motion, 81; doubts propriety of mutual negative of each branch of legisture on the other, 110, 111; thinks time of meeting of legislature should not be fixed by constitution, 113; thinks suffrage question should be left to the states, 117; favors free general suffrage, 119; thinks seven years' citizenship should be required of Representatives, 129; moves that Representatives be required to be inhabitants of their states for one year, 132; favors postponing question of voting in Senate, 143; favors postponing question of originating money bills, 145; thinks aliens should not be in legislature, 146; thinks quorum in legislature should be a majority, 160; approves expulsion from legislature by two-thirds vote, 164; thinks yeas and nays should be required, 165; thinks publication of journal of legislature necessary, 167; thinks government not bound by state laws on naturalization, 178; thinks first money bills should originate in House, 180; moves to allow members of legislature to hold any office, 192; thinks Representatives should be independent of state legislatures, 203; thinks revenue bills should originate in House, 206; thinks Senate may alienate territory, 207; moves that no tax be laid on exports, 215; favors power to emit bills of credit, 220, 221; favors appointment of treasurer by legislature, 222; thinks punishment may be fixed in cases of piracy, etc., 223; opposes giving power of

Mason (*Cont'd*).
war to executive, 228; thinks general government should regulate militia, 231; thinks funds may be diverted in time of war, 231; appointed on grand committee, 233; favors partial national control of militia, 236, 237, 239; favors power to make sumptuary laws, 244; thinks treason may be against a state, 248; thinks treason should be defined, 251; calls up amendment as to money bills, 255; thinks states should retain power over exports, 262; denounces slavery and slave trade, 265; asks how legislature can negative state laws, 287; objects to compelling settlement of old debts, 300; opposes naming slave-inporting states, 304; thinks tax on importation of men necessary, 306; on committee of August 25, 308; moves amendment to executive's oath, 310; thinks judges' salaries should be fixed, 313; thinks states may interfere in private contracts, 319; thinks states may lay embargoes, 320; thinks states may wish to encourage industries by imposts, 321; thinks two-thirds vote necessary for commercial regulations, 329; thinks western people should be treated with equality, 333; thinks nine states may ratify constitution, 349; declares he will not sign constitution, 351; approves amendment relative to interstate validity of state acts, 355; thinks members of legislature should not hold other offices, 359; thinks President will usually be chosen by Senate, 366; thinks election of President by electors objectionable, 374; thinks President may be elected by minority, 375; moves that Senate choose President from three highest candidates, 377; thinks system of electors autocratic, 378; prefers eventual election of President by House of Representatives, 386; approves increasing number for quorum to elect President, 387; thinks Vice-President will encroach on Senate's rights, 396; favors an executive council, 401; moves to extend reasons for impeaching President, 407; moves to postpone motion for second convention, 421; thinks two-thirds vote may override President's negative, 440; thinks bill of rights necessary, 441; moves states may levy export duties, 442; moves clause for sumptuary laws, 444; on committee on sumptuary legislation, 445; favors state tax on exports, 445; moves publication of all proceedings of House, 449; favors power to cut canals, 453; opposed to standing armies, 454; moves to strike out prohibition of *ex post facto* laws, 455; moves verbal amendment to capitation tax clause, 456; moves annual publication of expenditures, 456; thinks states may lay tonnage dues, 462; thinks President should not have power to pardon for treason, 463; thinks legislature should have pardoning power for treason, 464; disapproves provision for amendments, 467; objects to navigation acts by majority, 469; announces he cannot sign constitution, 470; refuses to sign, 483.

McClurg, James, Va., attends convention, iii., 2; moves that term of executive be for good behavior, 456; insists upon necessity for independence of executive, 459; Pierce's sketch of, iv., 20, n.; suggests ascertaining how executive is to act, 20; writes to Madison, 91, n., 96, n., 286, n., 412, n.

McHenry, James, Md., attends convention, iii., 5; Pierce's sketch of, iv., 190, n.; appointed on grand committee,

McHenry (*Cont'd*).
233; thinks direct taxation should be by quotas from states, 258; thinks embargo power embraced in war power, 261; moves prohibition of *ex post facto* laws or bills of attainder, 275; proposes plan for choosing ports of entry, 307; moves judges receive fixed salaries, 313; thinks Maryland must ratify according to her law, 348; thinks vessels will take officers as security of entry dues, 353; moves President have power to convene either house of legislature, 410; moves states may lay tonnage dues, 461.

Mercer, John Francis, Md., attends convention, iv., 91; opposes election of Representatives by the people, 127; opposes whole plan of constitution, 128; thinks the people ought to be guided in their voting, 129; suggests that candidates for Representatives be nominated by state legislatures, 129; opposes requirement of seven years' residence of Representatives in their states, 130, 131; thinks Senate should have power to originate money bills, 139; thinks less than a majority should be quorum of legislature, 160; seconds motion to fix quorum at few, 162; thinks Senate should have only legislative power, 166; thinks two houses will not agree on place of meeting, 169; thinks provisions as to citizenship should not apply to those now citizens, 175; thinks government bound by state laws on naturalization, 179; thinks aristocracies will arise, 193; fears good men will not serve in legislature, 199; thinks Senate ought not to make treaties, 207; thinks judiciary should not be included in revisionary power, 208; opposes taxing exports, 217; declares himself friendly to paper money, 220; favors appointment of treasurer by executive, 222; favors defining of piracies, felonies, etc., 224; opposes power to subdue rebellion without request of state legislature, 225.

Mifflin, Thomas, Pa., attends convention, iii., 5; seconds motion that acceptance of other office shall vacate seat in legislature, iv., 192; Pierce's sketch of, 192, n.

Militia, power of regulating, debated, iv., 231, 236; report on, 253, 278, 283, 285; command of, debated, 309. *See* Legislature, national, power of.

Money bills, originating of. *See* Legislature, national, money bills, House of Representatives, Senate.

Monroe, James, to Jefferson, on prospects of the convention, iv., 69, n.

Morris, Gouverneur, Pa., attends convention, iii., 2; offers address from citizens of Rhode Island, 10; Pierce's sketch of, 10, n.; objects to committee on minutes, 14; moves question of federal or national government, 37; explains difference between federal and national government, 39; favors compromise committee on question of representation, 344; favors election of Senators for life, 345; opposes report of compromise committee on representation, 357; thinks representation should be according to wealth, 362, 383; thinks representation should not be definitely fixed, 365, 401; on committee on representation question, 368; favors originating money bills in both houses, 370, 372; opposes equal representation of small states, 378; submits report on representation in House, 381; favors referring question of representation to committee, 383; moves consideration of question of fixing

Morris (*Cont'd*).
representation, 383; favors property and population as basis of representation, 388; thinks southern states sufficiently represented, 389; objects to requiring legislature to take census, 393; fears preponderance of western states, 393; opposes inclusion of slaves in basis of representation, 399, 408, 421; moves that taxation be according to representation, 409, 410, 418; thinks legislature should adjust basis of representation, 411; moves reconsideration of question of representation in Senate, 444; opposes taxation by quotas, 446; opposes forbidding national government to interfere with state police, 446; favors power in legislature where harmony would be disturbed by state legislation, 447; opposes negative of state laws by legislature, 447, 449; thinks judiciary will have power to set aside laws, 449; favors election of executive by the people, 450, 452; opposes ineligibility of executive, 455; favors election of executive during good behavior, 456; disclaims friendliness to monarchy, 459; favors appointment of judges by executive, 461; thinks impeachment trials should not be before the judges, 463; favors appointment of judges by executive with consent of Senate, 465; favors power to increase judges' salaries, 465, 467; favors institution of inferior judicial tribunals, 467; opposes continuance of old Congress, 468; opposes guaranteeing existing laws to the states, 469; favors a vigorous executive, iv., 1; favors re-eligibility of executive, 3, 71; favors short term for executive, 11; thinks executive ought not to be impeachable, 13; admits executive ought to be impeachable in some cases, 15, 19; moves that electors for executive be not officials, 20; thinks revisionary power requires more than the executive, 24; thinks judiciary and executive may exercise revisionary power jointly, 29; favors appointment of judges by executive, 34; favors ratification of constitution by the people, 43; moves that voting in Senate be per capita, 45; moves ratification of constitution by a general convention, 45; moves that there be three Senators from each state, 46; opposes election of executive by members of national legislature chosen by lot, 54; opposes election of executive by national legislature, 55; opposes apportionment of direct taxation by representation, 58; favors election of executive by the people, 64; thinks each voter for executive may vote for two persons, 66; opposes property qualification for members of legislature, 73; thinks debtors of government need not be excluded from legislature, 74, 79; seconds motion to strike out "landed" property as requirement in executive, 77; opposes prohibiting national capital at state capital, 81; moves to restrict mutual negative of each branch of legislature on the other to legislative acts, 110; thinks treaties are not laws, 111; moves to strike out provision for time of meeting of legislature, 112; moves to change time of meeting of legislature from December to May, 114; favors absolute negative in executive on legislature, 115; moves restriction of suffrage to freeholders, 116; thinks suffrage should be fixed by legislature, 117; thinks general suffrage will produce aristocracy, 118; favors seven years' citizenship for representatives, 129; opposes requirement that Repre-

Morris (*Cont'd*).
sentatives be residents of their states, 130; moves that representation be by free population, 135; opposes slavery and the slave trade, 135; thinks Senate should have right to originate money bills, 138, 184; agrees that vacancies in Senate must be by refusals, resignations, etc. 142; favors equal vote in Senate, 144; moves fourteen years' citizenship for Senators, 145; opposes admission of aliens into government, 149; moves that state legislatures fix time and mode of electing Representatives, 152; opposes leaving time and mode of electing Representatives exclusively to state legislatures, 154; moves to strike out property qualification, 158; moves to fix quorum at few, 161; thinks any member may call for yeas and nays 164; thinks majority may expel from legislature, 164; thinks citizenship requirements ought not to apply to those already citizens, 175, 177; thinks members of legislature may hold some other offices, 195, 200; thinks members of legislature may serve in army and navy, 201; favors national compensation of legislature, 201; thinks revenue bills need not be confined to House, 206; thinks some check on legislative acts necessary, 209; moves that executive power of negative extend to resolutions, 213; thinks exports may be taxed, 215, 217; opposes power to emit bills of credit, 219; thinks legislature should punish counterfeiting, 223; moves that legislature punish piracies, etc., 224; thinks legislature should designate piracies, etc., 225; thinks legislature should have power to subdue rebellions, 225; opposes inclusion of executive in power to subdue rebellions in states, 225; thinks power to subdue rebellions necessary, 226; submits propositions for committee of the whole, 242; opposes power to make sumptuary laws, 244; thinks treason should be defined, 246, 247; moves British statute for treason, 249; thinks treason should not be twice punishable, 251; thinks debts should be adjusted with taxation, 255; favors power to tax exports, 259; moves slave-trade question be committed, 271; thinks prohibition of *ex post facto* laws unnecessary, 276; favors prohibiting bills of attainder, 276; moves new government discharge engagements of old government, 278; moves that Senate shall not have power of appointment, 285; moves that power to enforce treaties be not specified, 285; moves clause giving power over militia, 285; thinks national appointment of state executives should be committed, 288; doubts if treaties should be referred to Senate, 289; suggests that treaties will be negotiated in this country, 290; opposes election of executive by legislature, 296; moves election of executive by electors, 297; moves executive be required to make recommendations to legislature, 298; objects to state power to appoint federal officers, 300; thinks debts of old government should be paid by new government, 302; moves that slave-importing states be named, 303; withdraws motion, 304; thinks freemen may be taxed, 305; seconds motion to make treaties supreme law, 306; moves that executive have power to correspond with states, 308; moves chief justice succeed as executive, 310; objects to removability of judges upon legislature's application, 312; moves judicial power extend to cases in which U. S. is

Morris (*Cont'd*).
party, 314; asks what is appellate power of judiciary, 315; moves verbal change in judiciary clause, 315; opposes power to suspend habeas corpus except in emergency, 317; opposed to forbidding states to interfere in private contracts, 319; thinks prohibiting embargoes by states unnecessary, 320; thinks states should not tax exports, 322; favors commercial regulations, 328; moves interstate validity of acts of states, 325; opposes admission of western states on an equality, 333; does not wish power to pass to western states, 333; proposes method of admitting new states, 334; opposes admission of new states by two-thirds vote, 334; thinks states must consent to division, 336; thinks question of new states is one of jurisdiction rather than limits, 338; moves that legislature control public lands, 342; thinks supreme court has jurisdiction in land cases, 342; thinks legislatures may call convention to amend constitution, 344; approves motion prohibiting religious test for office, 344; thinks contiguous states must ratify, 344; thinks states may choose method of ratification, 347; moves Congress be not required to approve constitution, 350; favors a second convention, 351; on committee of August 31, 354; moves amendment on the subject of interstate validity of state acts, 355; favors national bankruptcy laws, 357; thinks members of legislature may hold other offices, 358; fears election of President will devolve on Senate, 365; defends system of electors, 365, 381; thinks election of President should be free from cabal, 367; prefers eventual election of President by Senate to whole legislature, 368; thinks each House should be judge of privileges of its own members, 369; moves postponement of clause relative to revenue bills, 371; seconds motion to require state legislature's consent to national purchase of forts, etc., 372; does not think Senate will elect President, 375; favors separate provision for re-election of President, 380, 387; thinks Vice-President will not be in accord with President, 395; thinks President must concur in treaties of peace, 400; thinks executive council unnecessary, 402; opposes special provision for treaties of peace, 404; thinks whole legislature should participate in treaties of peace, 405; objects to two-thirds of Senate being a quorum, 406; favors impeachment for maladministration, 407; thinks Senate should try impeachments, 408, 410; on committee on style and arrangement, 411; favors three-quarter vote to override President's negative, 439; points out danger from unstable laws, 440; favors state power to collect export duties, 443; explains words "direct taxes" in report, 446; approves verbal amendment on negative of bills, 446; moves suspension from office of persons impeached, 449; thinks legislature may appoint treasurer, 451; moves offences against law of nations be definable, 451, 452; thinks government can establish university, 454; opposes provision against standing army, 454; thinks publication of expenditures impossible, 456; thinks states may lay tonnage dues, 462; opposes power of legislature to pardon for treason, 463; moves executive and others have power of appointment, 465; moves amendments by general convention, 468; moves states have equal suffrage in

Morris (*Cont'd*).
Senate, 469; announces he will sign constitution, 477.
Morris, Robert, Pa., attends convention, iii., 1; Pierce's sketch of, 2, n.; moves Washington's election as president of convention, 3; thinks Senate should be chosen by the people, 113; favors life term for Senators, 283.

N

National government of three branches agreed to, iii., 41.
"National" in Virginia plan, word struck out, iii., 226.
Naturalized citizens, rights of debated, iv., 175.
Navigation acts, question of, committed, iv., 272; postponed, 306; agreed to, 332; considered, 353; debated, 461, 469.
Navy, provision for, debated, iv., 235.
Negative on legislative acts. *See* Executive, national, negative of; Judiciary, national, supreme, negative of.
Negative on state laws. *See* Legislature, national, negative of.
New Hampshire, moved that governor of, be requested to send delegates, iii., 325; representation of, 386, 389; delegates from, attend convention, iv., 36.
New Jersey plan. *See* Jersey plan.
Nightingale, Jos., signs address from Rhode Island, iii., 12, n.
North Carolina, representation of, iii., 389, iv., 459.

O

Oath to support national government from state officers, debated, iii., 94, 146, 147, 164, iv., 36; to support constitution, affirmation permitted, 344.
Olney, Jeremiah, signs address from Rhode Island, iii., 12, n.

P

Pardons and reprieves. *See* Executive, national, power of.
Patents and copyrights. *See* Legislature, national, power of.
Patterson plan. *See* Jersey plan.
Patterson, William, N. J., attends convention, iii., 1; Pierce's sketch of, 93, n.; moves to consider mode of voting in legislature, 130; favors equal vote by states in legislature, 131, 378; offers plan of government, 165; on committee on representation, 350; defends small states, 361; opposes inclusion of blacks in representation, 384; favors adjournment to consider representation in Senate, 441; opposes ineligibility of executive, iv., 7.
Peace, power to declare, debated, iv., 228.
Pensioners, disqualification of, from legislature, proposed, iv., 79.
Phillips, Jonas, letter of, iv., 391, n.
Pierce, William, Ga., notes of convention, iii., 1, n.; sketch of Yates, 1, n.; sketch of Robert Morris, 2, n.; sketch of Few, 2, n.; sketch of Blair, 2, n.; sketch of Bassett, 2, n.; sketch of Washington, 3, n.; sketch of Wilson, 4, n.; sketch of Hamilton, 4, n.; sketch of Wythe, 6, n.; sketch of King, 6, n.; sketch of Mason, 7, n.; sketch of Gouverneur Morris, 10, n.; sketch of Butler, 12, n.; sketch of Spaight, 13, n.; sketch of Charles Pinckney, 14, n.; sketch of Randolph, 15, n.; sketch of Charles Cotesworth Pinckney, 38, n.; sketch of Gerry, 39, n.; sketch of Sherman, 40, n.; sketch of Read, 40, n.; sketch of Madison, 41, n.; attends convention, 45; sketch of Rutledge, 53, n.; sketch of Franklin, 57, n.; sketch of Bedford, 63, n.; sketch of Williamson, 67, n.; sketch of Dickinson, 73, n.;

Pierce (*Cont'd*).
sketch of Davey, 77, n.; sketch of Patterson, 93, n.; favors election of Representatives by people and to Senate by legislatures, 106; sketch of Pierce, 106, n.; sketch of Brearley, 130, n.; sketch of Ellsworth, 144, n.; proposes three years' term for Senators, 153; sketch of Lansing, 165, n.; sketch of Johnson, 239, n.; sketch of Strong, 248, n.; sketch of Gorham, 251, n.; sketch of Alexander Martin, 260, n.; sketch of Dayton, 294, n.; opposes equal state representation, 320; sketch of Baldwin, 324, n.; sketch of Broome, iv., 9, n. sketch of McClurg, 20, n.; sketch of Gilman, 36, n.; sketch of Houston, 47, n.; sketch of Carroll, 47, n.; sketch of Langdon, 79, n.; sketch of Jenifer, 148, n.; sketch of McHenry, 190, n; sketch of Mifflin, 192, n.; sketch of Livingston, 253, n.; sketch of Blount, 478, n.; sketch of Ingersoll, 481.

Pinckney, Charles, S. C., attends convention, iii., 2; appointed on committee on rules, 5; moves a committee on minutes, 14; Pierce's sketch of, 14, n.; submits plan of constitution, 21; letters of concerning draft, 22, n.; asks if state governments are to be abolished, 38; favors enumerating powers of national legislature, 53; favors vigorous executive, 57; favors seven years' term for national executive, 63; favors single executive, 77; favors appointment of judiciary by executive, 92; opposes provision for amendments of constitution, 94; favors ratification by nine states, 96; moves election of Representatives by state legislatures, 99; opposes inclusion of judiciary in revisionary power, 110; moves consideration of negative on state laws, 111; favors election of Senators by state legislatures, 119; favors negative by legislature on all laws, 121; moves classification of states to determine representation, 127; favors representation by free population, 143; proposes selection of judges by legislature, 157; favors election of representatives by the people, 267; opposes equal state representation in Senate, 343; favors representation by population, 361; thinks originating money bills in House no concession, 372; favors representation of blacks equal with whites, 415; proposes proportional representation in Senate, 428; favors negative by legislature of state laws, 449; favors election of executive by the people, 452; opposes impeachability of executive, iv., 13, 16; favors appointment of judges by Senate, 32; moves that executive be elected by legislature for not more than six years in twelve, 63; moves exclusion from executive and judiciary of debtors of government, 74; opposes disqualification of debtors from legislature, 80; thinks national capital ought not to be at state capital, 81; moves reference to committee of whole of report of committee of detail, 109; thinks time of meeting of legislature need not be fixed in constitution, 112; moves increase in representation of South Carolina, 132; thinks fisheries and western frontier more burdensome than slavery, 138; moves to strike out requirement as to money bills, 138; favors fourteen years' citizenship for Senators, 145; thinks no strangers should be in legislature, 146; moves that time and mode of election of Representatives be fixed by state legislatures, 152; insists on property qualification for officers of government, 155; opposes considering question of

Pinckney (*Cont'd*).
money bills, 171; thinks government not bound to respect state laws on naturalization, 178; opposes ineligibility of members of legislature to other offices, 191, 198; moves that acceptance of other office shall vacate seat in legislature, 192; favors postponement of clause relating to eligibility of members of legislature to other offices, 201; thinks judiciary should not be included in revisionary power, 208; favors appointment of treasurer by joint ballot, 222; moves legislature subdue rebellions without application to state legislatures, 225; thinks Senate should have power to declare war, 227; thinks state debts may be assumed by government, 232; opposes executive council, 234; favors national control of militia, 239; submits propositions for committee of detail, 240; seconds Morris's propositions for committee of detail, 242; moves power to create necessary offices, 245; declares constitution will fail if slave trade is prohibited, 265; defends slavery, 267; moves to commit question of navigation acts, 272; moves officers be forbidden to accept presents from foreign states, 284; moves national power to negative state laws, 286; thinks state executives should be appointed by national government, 288; moves election of executive by majority of legislature, 296; thinks rights of habeas corpus should be assured, 317; proposes that fugitive slaves be surrendered, 323; moves to recommit question of interstate validity of state acts, 324; favors commercial regulations, 326, 327; moves that no religious test be required for office, 344; moves that Congress be not required to approve constitution, 350; moves ineligibility of members of legislature to other offices with emoluments, 357; thinks they should be eligible to other offices, 359; asks why mode of electing President is to be changed, 365; thinks electors objectionable, 366, 373; moves each house of legislature judge privileges of its own members, 369; agrees to postponement of clause relative to revenue bills, 371; seconds motion that two-thirds of Senate be present when electing President, 386; thinks Senate should not share in appointments, except of ambassadors, 398; opposes power of impeaching President, 408; moves an address to accompany constitution, 421; opposes three-quarter vote to override President's negative, 440; moves power to establish a university, 453; thinks legislature should not name treasurer, 451; opposes provision against standing armies, 455; moves guaranty of liberty of the press, 455; favors publication of accounts from time to time, 457; favors increase of North Carolina representation, 460; moves preservation of jury trials in civil cases, 466; announces he will sign constitution, 471; urges unequivocal signing, 480.

Pinckney, Charles Cotesworth, S. C., attends convention, iii., 2; Pierce's sketch of, 38, n.; opposes election of Representatives by the people, 107; thinks Senate should have power to originate money bills, 160; favors election of Representatives by state legislatures, 244, 246; opposes ineligibility of Representatives to state offices, 259; favors four years' term for Senators, 283, 284; favors no salary for Senators, 292; thinks Senate should be dependent on states, 295; favors compromise on representation,

Pinckney (*Cont'd*).
344; thinks originating money bills in House no concession, 374; favors equality of representation for southern states, 387; favors greater representation for southern states, 388; moves increase of representation for North and South Carolina, and Georgia, 389; insists upon inclusion of blacks in basis of representation, 397; opposes tax on exports, 410; thinks slave property should be protected, 412; favors first census as basis of representation, 415; opposes adjournment on representation question, 441; insists constitution must provide against emancipation, iv., 48; moves exclusion from judiciary and executive of public debtors, 74; seconds motion to strike out provision for mutual negative of one branch of government over another, 111; moves that representation of South Carolina be increased, 132; moves ten years' citizenship for Senators, 151; asks whether there is to be no army, 236; favors national control of militia, 236, 238; declares constitution will fail if it interferes with slavery, 268; declares South Carolina will not soon stop slave trade, 271; on committee on navigation acts, 273; favors effective control of militia, 281; seconds motion to reconsider question of discharge of debts, 292; favors extension of slave trade, 303; proposes plan for selecting ports of entry, 307; thinks judges' salaries may be raised, 313; favors compromise on commercial regulations, 326; praises New England men, 327; approves motion that no religious test be required for office, 344; opposes clause as to juries in civil cases, 466; dislikes form of signing, 481, n.

Pinckney plan, real date of, iii., xvi.; letters concerning, 22, n; submitted, 23; facsimile of, 24; referred to committee of detail, iv., 58, 90.

Piracies and felonies, power to declare, debated, iv., 223.

Ports of entry, method of choosing, debate on, iv., 307.

Post-offices, power to establish. *See* Legislature, national, power of.

Prayers in convention proposed by Franklin, iii., 311.

Presents, acceptance of, from foreign states, by officers, forbidden, iv., 284.

President, the. *See* Executive, national.

President of the convention, Washington elected, iii., 3.

Property qualification. *See* Executive, national, compensation of; Judiciary, national, compensation of; Legislature, national, property qualification for; Senate.

Proportional representation. *See* Legislature, national, representation in.

Q

Quorum. *See* Legislature, national, quorum in.

R

Randolph, Edmund, Va., attends convention, iii., 2; offers Virginia plan, 15; Pierce's sketch of, 15, n.; explains design of Senate, 51; opposes indefinite power of legislature, 54; opposes single executive, 59, 77; opposes election of executive by state executives, 129; favors provision for amendment of constitution, 146; favors oath of allegiance to national government from state officers, 146; favors seven years' term for Senators, 153; moves extent of supreme court's jurisdiction, 156; opposes Jersey plan, 179; favors two years' term for representatives,

Randolph (*Cont'd*).
247; favors national compensation for Representatives, 251; favors rotation in personnel of Senate, 282; moves that sermon be preached to convention, 312; favors committee of compromise on representation, 348; on committee of compromise on representation, 368; objects to submitting question of voting in Senate to committee of small states, 369; opposes reduction of representation of New Hampshire, 389; moves that census be required, 393, 396, 413; moves representation by free inhabitants and three-fifths slaves, 413, 420; favors adjournment on representation in Senate, 441, 442; opposes power to legislate where state legislation would interrupt harmony, 447; favors appointment of judges by Senate, 463; favors guaranty of republican government to states, 470; favors ineligibility to re-election of executive, iv., 5; favors impeachability of executive, 17; favors appointment of judges by executive, 32; thinks constitution should be ratified by the people, 38; favors fixing time of meeting of legislature provisionally, 114; thinks it unimportant when legislature meets, 115; revives question of money bills originating, 140; thinks state executives may safely fill vacancies in Senate, 141; moves to postpone question of voting in Senate, 142, 144; favors postponement of question of originating money bills, 145; opposes fourteen years' residence for Senators, 148; favors nine years' citizenship for Senators, 151; moves legislature have power to compel attendance of members, 163; approves expulsion from legislature by two-thirds vote, 164; thinks yeas and nays may be ordered by any member of legislature, 164; moves Senators may dissent from any measure, 165; thinks originating money bills ought to be reconsidered, 170; moves four years' citizenship for Representatives, 172; moves bills to raise revenue shall originate in House without power of amendment in Senate, 180; thinks provision as to money bills should stand, 188; favors disqualification of members of legislature from other offices, 201, 359; moves that power of negative extend to resolutions, 213; favors power to emit bills of credit, 221; doubts whether legislature may declare law of piracies, 223; moves that legislature define piracies, etc., 224; opposes suppression of rebellion without request of state, 226; favors extended definition of treason, 246; moves British statute on treason, 249; favors commitment of question of slave trade, 272; thinks power to fulfil engagements of old government unnecessary, 277; favors national control of militia, 282; moves postponement of question of treaty-making, 291; favors reconsideration of question of discharge of debts, 292; suggests states appoint some federal officers, 299; moves obligations of old government be binding on new, 302; opposed to removability of judges on application of legislature, 312; moves judges' salaries be fixed for three years, 314; on committee on interstate validity of state acts, 325; favors interstate validity of state acts, 325; announces objection to features of constitution, 331; moves that ratification from nine states be required, 345; favors second convention to consider amendments, 351; thinks declaration as to state acts defective, 356; asks why the mode of electing

Randolph (*Cont'd*).
President is to be changed, 365; thinks eventual election of executive should be by whole legislature, 368; doubts whether each House should judge of the privileges of its members, 369; thinks mode of choosing President aristocratic, 376; moves that legislature name President when both President and Vice-President die, 391; thinks Vice-President should not be President of Senate, 396; thinks state conventions may offer amendments to constitution, 417; states his objections to the constitution, 420; proposes second convention, 421; moves pardons in treason cases be considered, 422; moves use of word "service" for "servitude," 445; seconds verbal amendment to clause on negative of bills, 446; moves suspension of officers impeached, 449; favors power to grant charters, 452; seconds motion against standing armies, 454; moves to except treason from President's power to pardon, 463; thinks President and Senate should not combine, 464; announces he cannot sign constitution, 470, 477; proposes second federal convention, 470; thinks second convention feasible, 479; does not sign, 483.

Ratification of constitution, method of, debated, iii., 94, iv., 39, 344, 415, 418; by conventions, proposed, iii., 96; by people of states, 147, 164, 226; by assemblies chosen by the people, debated, iv., 45; resolutions concerning, offered, 447.

Read, George, Del., attends convention, iii., 2; moves debate on three branches of government, 40; Pierce's sketch of, 40, n.; moves to postpone question of representation, 43; favors national government, 106; moves Senate be named by executive, 113; opposes guaranty of territory to the states, 145; favors forbidding Senate from originating money bills, 159; thinks injustice was done small states in land cession, 278; supports small states on question of representation, 278; favors life term for Senators, 283; moves nine years' term for Senators, 284; thinks the United States ought to be one people, 288; favors abolishing states, 315; favors increase in representation, 391; thinks representation ought to be fixed by legislature, 400; thinks taxation and representation may be adjusted, 418; moves absolute negative by executive on legislature, iv., 115; opposes requirement that Representatives live in the states they represent, 130; opposes provision as to money bills, 142; moves that national legislature have power over elections if states make no provision, 155; opposes power to emit bills of credit, 221; moves that treasurer be appointed by executive, 222; doubts national control of militia, 240; thinks requisitions were accommodated to poverty of states, 256; favors commitment of question of taxing exports, 272; moves President of Senate have additional casting vote for executive, 296; on committee of August 25, 308; objects to same court having equity and law jurisdiction, 311; opposed to separate provision for re-election of President, 380; thinks small states should have vote for President in legislature, 394; moves prohibition of direct tax, 455.

Rebellion in states, power to subdue, debated, iv., 225.

Representation in legislature. *See* Legislature, national, representation in, House of Representatives, Senate.

Republican government, guaranty of, to states, debate on, iii., 93, 144, 164, 469, iv., 342; amendment adopted, 467.
Rhode Island, address from citizens of, iii., 10, n.; moved representation of, be increased, iv., 459.
Rules, of convention, committee on, appointed, iii., 5; reported, 6; adopted, 7; additional, adopted, 13.
Of legislature. *See* Legislature, national, rules of.
Russell, William, signs address from Rhode Island, iii., 12, n.
Rutledge, John, S. C., attends convention, iii., 2; seconds motion for Washington's election as President, 3; wants enumeration of powers of legislature, 53; Pierce's sketch of, 53, n.; favors single executive, 77; opposes appointment of judges by executive, 91; opposes inferior judicial tribunals, 96; moves classification of states to determine representation, 127; favors representation according to wealth, 137, 143, 364; favors two years' term for Representatives, 148; thinks Senators should receive no compensation, 155; favors election of Representatives by state legislatures, 245; favors ineligibility of Representatives to other offices, 260, 267; opposes sending for New Hampshire delegates, 326; on committee on compromise on representation, 350, 368; moves fixing representation, 383; opposes increase in representation, 392; moves that representation be by wealth and population, 400; proposes to reconsider originating of money bills, 420; thinks powers of legislature loosely defined, 440; opposes adjournment to consider representation, 442; opposes guaranteeing republican government to states, 471; favors election of executive by state legislatures, iv., 9; opposes inclusion of judiciary in revisionary power, 31; on committee to report constitution according to resolutions, 58; submits report of committee, 91; moves annual meeting of legislature, 115; opposes confining suffrage to freeholders, 127; favors seven years' residence in their states of Representatives, 130; favors three years' residence in their states of Representatives, 132; insists on longer than seven years' citizenship for Senators, 151; moves mode of election of Representatives be left to state legislatures, 152; insists on property qualification for officers of government, 156, 159; moves publication of Senate journals, 166; thinks provision as to citizenship should apply to those already citizens, 176; opposes provision as to money bills, 189; seconds motion to postpone provision as to money bills, 207; urges progress, 212; opposes tax on exports, 215; moves that funds for public creditors be not diverted, 231; moves that state debts be assumed by government, 232; urges expedition, 233; defends slavery, 264; declares South Carolina and Georgia will not accept constitution if it prohibits slave trade, 271; submits report on Madison and Pinckney propositions, 273; thinks prohibition of *ex post facto* laws unnecessary, 277; reports constitution according to resolutions, 277; moves constitution be the supreme law, 285; opposes power of negative of state laws, 287; thinks judiciary will decide controversies between states, 292; moves election of executive by joint ballot of legislature, 294; opposed to removability of judges on legislature's application, 312; moves judiciary have power over treaties, 314; thinks rights of

Rutledge (*Cont'd*).
habeas corpus should be inviolable, 317; moves to prohibit bills of attainder and retrospective laws, 320; on committee on interstate validity of state acts, 325; favors commercial regulations, 330; thinks there is no danger of dismemberment of states, 337; thinks it unnecessary to guarantee public lands, 341; presents committee report, 355; opposes plan for executive, 373; moves Senate choose President from thirteen candidates, 378; moves two-thirds of whole Senate concur in treaties, 405; objects to general power against slavery, 414; opposes legislature appointing treasurer, 450; opposes address to people, 458; moves to limit President's emoluments, 463.

S

Seat of government, not to be at same place with state capital, iv., 80; at central point proposed, 81; provisions for, 169.
Second branch of legislature. *See* Legislature, national, Senate.
Senate. *See* Legislature, national, Senate.
Sermon for members of convention agreed to, iii., 312.
Sherman, Roger, Conn., attends convention, iii., 37; favors conservative course toward states, 40; Pierce's sketch of, 40, n.; opposes election of Representatives by the people, 46; favors election of one Senator from each state, 52; favors election of executive by state legislatures, 58, 63, 450; favors three years' term for executive, 63; thinks legislature should have power to remove executive, 74; favors an executive council, 80; opposes negative by executive, 84; opposes ratification of constitution by conventions, 94; opposes creation of inferior judiciary tribunals, 98; favors election of Representatives by state legislatures, 101; favors elections to Senate by state legislatures, 112, 118; favors limiting power of negative on state laws, 123; proposes proportional representation in House and by states in Senate, 136; proposes each state have one vote in Senate, 144; opposes oath to national government by state officers, 146; proposes one-year term for Representatives, 148; proposes five years' term for Senators, 153; opposes leaving time and mode of electing Representatives to state legislatures, 154; proposes election of judges by national legislature, 157; thinks money bills may originate in Senate, 159; opposes two branches of legislature, 234; favors election of Representatives by state legislatures, 245; consents to two years' term for Representatives, 249; favors compensation of Representatives by states, 252; opposes ineligibility of Representatives to state offices, 260, 263, 266; favors six years' term for Senators, 283; favors six or four years' term for Senators, 287; favors rights of small states, 308; proposes committee on representation, 344, 383; favors vote by states in Senate, 376; moves to postpone question of representation, 381; opposes increase in representation, 389, 390; opposes periodical census, 394; thinks representation should be fixed by census, 400; thinks representation fairly apportioned, 406; favors leaving question of taxation to state legislatures, 419; thinks Senators may vote per capita, 428; thinks government should have coercive power over states, 436; thinks government will act on states in requiring tax quotas, 436; moves that government

Sherman (*Cont'd*).
should not interfere with internal policy of states, 445; opposes direct taxation by national government, 446; thinks state courts will consider state laws contravening national authority invalid, 447; opposes negative by legislature of state laws, 447; opposes ineligibility of executive to second term, 455; opposes tenure of executive for good behavior, 456; favors appointment of judges by Senate, 462; favors appointment of judges by executive with consent of Senate, 465; opposes creation of inferior judicial tribunals, 467; favors negative of each branch of legislature on the other, iv., 110; thinks time of meeting of legislature should be specified, 114; moves Representatives be inhabitants of their states, 129; thinks representation should stand, 134; moves that representation not exceed 1 to 40,000, 135; thinks slaves should be included in representation, 137; thinks yeas and nays may not be required, 164; moves publication of journal of legislature, 166; thinks general government can make any regulations as to citizenship, 176; thinks those in power should be free from temptation, 197; favors payment of legislature partly by states and partly by nation, 203; thinks power of negative should not be extended, 211; thinks revision of acts by President unnecessary, 214; favors no tax on exports, 215, 218; opposes appointment of treasurer by joint ballot, 222; thinks executive should not have power to commence war, 227; thinks state debts may be assumed by government, 232; appointed on grand committee, 233; thinks states should partially control militia, 237, 239; thinks resistance to national laws treason, 251; thinks report on state debts meaningless, 254; favors limiting representation of large states, 254; moves settlement of debts on basis of taxation, 255; thinks provision as to slave trade may stand, 265, 271; thinks question of taxing exports settled, 272; moves that states have power to train militia, 279; withdraws motion, 279; proposes mixed control of militia, 280; thinks states should appoint militia officers, 283; thinks negative of state laws by general government unnecessary, 286; thinks judiciary will decide controversies between states, 293; opposes election of executive by joint ballot of legislature, 294; objects to executive appointing all officers, 298; objects to legislatures of states appointing federal officers, 299; moves express provision for paying debts, 303; opposed to taxing men as property, 305; thinks revenue the object of import tax on slaves, 305; on committee of August 25, 308; moves amendment to pardoning power, 308; moves militia be under executive when in active service, 309; favors removability of judges on application of legislature, 312; moves judicial power extend to land grants, 316; reports amendments on commercial regulations and judicial power, 316; moves to prohibit bills of credit or payments in anything but coin, 318; wishes to crush paper money, 318, 319; thinks states should have power to lay embargoes, 320; thinks state legislatures may deal with impost question, 321; moves that states may tax exports for national treasury, 322; opposes surrender of fugitive slaves and servants, 323; desires commercial regulations by majority vote, 327; declares all should

Sherman (*Cont'd*).
have equal privileges, 333; thinks Union cannot dismember a state, 334; moves admission of new states by consent of state legislatures, 337; thinks constitution may guarantee public lands, 341; thinks no religious test will be applied for office, 344; thinks ratification should be from ten states, 345, 349; thinks ratification should be by all states, 346; moves to postpone ratification question, 348; moves to take up report of committee of eleven, 352; moves to refer draft of constitution to committee, 354; on committee, 354; opposes national bankruptcy law, 356; favors ineligibility of members of legislature to other offices, 358; does not object to election of Vice-President by majority, 364; thinks army in time of peace should be restricted, 371; willing to defer to those who think revenue bills vital, 371; thinks large states will have advantage in nominating candidates for President, 375; thinks President should not be chosen from three candidates, 378; thinks when legislature votes for President it should vote by states, 380; moves eventual election of President by House of Representatives, 386; approves of Vice-President being President of Senate, 395; favors inclusion of Senate in treaty-making, 397; thinks whole legislature should participate in treaties of peace, 405; moves that majority of whole Senate vote for treaties, 406; thinks supreme court should not try President, 408; thinks representation large enough, 411; moves states be required to consent to amendments, 413; favors submitting constitution to Congress, 417; favors two-thirds vote to override President's negative, 438; thinks state bills of rights sufficient, 442; thinks legislature should appoint treasurer, 451; objects to power to cut canals, 452; thinks provision for liberty of press unnecessary, 455; thinks accounts may be published from time to time, 457; opposes address to states, 458; favors additional representation for North Carolina, 459; thinks states and nation may have concurrent commercial jurisdiction, 462; seconds motion to vest appointments in President and others, 465; thinks three-quarter states may oppress others by amendments, 467; thinks conventions may act on amendments, 468; moves that states be preserved, 469; moves to strike out clause concerning amendments, 469.

Signing constitution, mode proposed, iv., 475; takes place, 478.

Slavery and slave trade, debate on, iv., 264, 303; compromise on, brought in, 327; power to prohibit, objected to, 414.

Slaves, import tax on, agreed to, iv., 306; delivery up of fugitive, proposed, 323; agreed to, 332; verbal amendment made, 466.

South Carolina, motion that representation of, be increased, iv., 132.

Spaight, Richard Dobbs, N. C., attends convention, iii., 2; moves rule for revision of questions, 13; Pierce's sketch of, 13, n.; seconds motion for representation by free inhabitants, 42; favors election to Senate by free population, 50; withdraws motion for elections to Senate by state legislatures, 51; moves reconsideration of appointment of executive by electors, iv., 47; seconds motion to elect executive by national legislature, 49; fears capital will be located at New York, 168; favors commercial regulations by majority

Spaight (*Cont'd*).
vote, 328; moves Senate choose President from thirteen candidates, 378; moves seven years' term for executive, 384; moves six years' term, 384; moves electors meet at seat of government, 385; proposes President make appointments during recess of Senate, 399; moves special provision respecting territorial rights, 403.
State acts, validity of, debated, iv., 324, 355, 356; certain, prohibited, 457.
State debts, debate on assumption of, iv., 232.
State laws, negative of. *See* Legislature, national, negative of.
State police, non-interference in, by national government, debated, iii., 446.
State representation, equal in House, debated, iii., 321; in Senate, 326, 343; committee to arrange, debated, 344, 350; report of committee, 352. *See* Legislature, national, representation in.
States, admission of new, provision for, agreed to, iii., 93, 164, 468; debated, iv., 332, 334, 336, 338, 339, 340, 466.
Strong, Caleb, Mass., attends convention, iii., 51; favors one-year term for Representatives, 248; Pierce's sketch of, 248, n.; favors committee on representation, 349; favors equal representation by states in Senate, 432; opposes inclusion of judiciary in revisionary power, iv., 24; thinks executive will not be re-elected, 49; thinks question of voting in Senate should be postponed, 142; favors $4 per day as payment for legislature, 205; moves revenue bills originate in House, 207.
Style and arrangement, committee on. *See* Committee on style and arrangement.
Sumptuary laws, debate on, iv., 244, 444; committee on, *see* Committee on sumptuary laws.
Supreme Court. *See* Judiciary, national supreme.

T

Taxation, by representation, debated, iii., 411, 419, iv., 57; basis of, by free and slave population, debated, iii., 412; direct on states in proportion to representation, debated, 420; direct by national government, opposed, 446; proposed that it be by quotas, iv., 251; according to congressional representation, debated, 252, 256; definition of direct, asked, 252; by population, proportion agreed to, 254; power of, on exports, debated, 263, 264, 456; on migration of slaves, debated, 264; on slaves, debated, 265, 292; capitation and direct, debated, 455. *See* Legislature, national, representation in.
Term of members of legislature. *See* Legislature, national, term of.
Territory, guaranty of, to each state, debated, iii., 145.
Tonnage dues. *See* Navigation acts.
Treason, debate on, iv., 246.
Treasurer, appointment of. *See* Legislature, national, power of.
Treaties, power to make, debated, iii., 289, 291, iv., 289, 397; force of, debated, 306; power to interpret, by judiciary, debated, 315; of peace, how to be made, 400, 403, 404; provision for, reconsidered, 404; proposed that they require two-thirds Senate, 405, 406; proposed that they require majority, 406; notice of, to Senators, proposed, 406. *See* Legislature, national, Senate.

U

University, national. *See* Legislature, national, power of.

V

Varnum, J. M., letter from, with address from Rhode Island, iii., 10, n.
Vermont, admission of, to Union, debated, iv., 335.
Veto power. *See* Executive, national, negative of.
Vice-President, duties of, defined, iv., 363, 364, 395.
Virginia plan, the, presented to convention, iii., 15; debated in committee of the whole, 37; debated, 45; reported on from committee of the whole, 160, 220; vote on, 220.
Voting, restriction of, to freeholders, debated, iv., 116.

W

War, power to declare, debated, iv., 227.
Washington, George, Va., attends convention, iii., 2; elected president of convention, 3; thanks convention for election, 3; Pierce's sketch of, 3, n.; rebukes member for losing his notes, 56, n.; John Jay's letter to, 59, n.; Knox's letter to, 191, n.; urges increase in representation, iv., 476; asks instructions concerning journals, 482.
Williamson, Hugh, N. C., attends convention, iii., 2; objects to election of executive by districts, 66; Pierce's sketch of, 67, n.; moves impeachability of executive, 77; favors limiting Senate to twenty-five members, 113; opposes indefinite power of negative on state laws, 122; favors proportional representation, 136; favors states paying representatives, 250; moves that number in Senate be fixed, 280; favors six years' term for Senators, 282; thinks rights of small states not menaced, 302; favors committee on representation in Senate, 349; opposes compromise proposed, 361; thinks Senate better able to consider money bills than House, 371; thinks proposed representation unfair to southern states, 388; favors reducing representation of northern states, 388; amends motion fixing periodical census, 396; thinks New Hampshire representation too large, 417; opposes election of executive by people, 454; opposes eligibility of executive to re-election, iv., 10, 50; opposes election of executive by electors, 10; favors six years' term for executive, 11; moves number of electors be based on Representatives, 13; moves electors be paid out of national treasury, 21; suggests national officers take oath to support state governments, 36; favors ratification of constitution by conventions, 42; favors voting per capita in Senate, 46; dislikes single executive, 50; suggests voting for three persons for executive, 65; favors forbidding national capital at state capital, 81; seconds motion to limit negative of each branch of legislature on the other, 110; moves representation in House based on taxation, 133; favors reconsidering question of money bills, 140; thinks provision for filling vacancies in Senate necessary, 141; insists upon guarding qualifications of Senators, 151, 158; thinks provision on money bills should be retained, 171; moves nine years' citizenship for Representatives, 173; opposes eligibility of members of legislature to other offices, 197; moves postponement of question of money bills, 206; moves to make three-quarters of legislature necessary to overcome executive negative, 212; thinks exports should not be taxed, 216; thinks state lands ought to be given up, 233; appointed on grand committee, 233; favors restrictions on

Williamson (*Cont'd*).
army, 236; moves quotas of states be determined, 255; opposes apportionment of taxation by representation, 256; thinks states should not have power to tax exports, 259; thinks slave trade should be left to states, 270; on committee on navigation acts, 273; thinks prohibition of *ex post facto* laws unnecessary, 277; thinks discussion of negative of state laws unnecessary, 287; doubts if judiciary can impartially decide controversies between states, 293; opposes slavery, but wishes union, 304; on committee of August 25, 308; moves to postpone question of executive succession, 310; seconds motion to make it impossible for states to levy imposts, 321; moves clause of articles of confederation as to state acts, 324; favors commercial regulations by two-thirds vote, 328; thinks question of new states should be left to legislature, 333, 337; on committee of August 31, 354; thinks ineligibility of members of legislature should extend to offices created during their term, 358, 360; objects to President's dependence on Senate in appointments, 366; moves to reconsider representation, 372; objects to Senate electing President, 374, 377, 382; moves election of President by one-third of all electors, 376; moves electors voting be the only ones counted, 378; favors separate provision for re-electing President, 380; moves seven years' term for President, 384; moves six years' term for President, 384; thinks electors should meet at seat of government, 385; suggests eventual election of President by whole legislature, voting by states, 386; thinks Vice-President unnecessary, 396; thinks treaties of peace important, 401, 403; thinks treaties may be made without majority of people, 404; opposes requirement that treaties be ratified by majority of whole Senate, 406; proposes that notice of treaties to Senators be required, 406; thinks Senate will lean towards President, 408; moves increase in representation in House of Representatives, 411; moves that old Congress sanction constitution, 420; favors two-thirds vote to override President's negative, 438; fears too many laws, 439; moves provision for juries in civil suits, 441; moves increase of representation, 448; seconds motion against direct tax, 456; suggests signing letter only, 478.

Wilson, James, Pa., attends convention, iii., 2; nominates William Temple Franklin for secretary of convention, 4; Pierce's sketch of, 4, n.; favors election of Representatives by the people, 47, 245; favors election of Senators by the people, 51, 113; favors a single executive, 57, 59, 79; favors election of executive by the people, 62, 64, iv., 7, 57; favors three years' term for executive, iii., 63; moves election of executive by district electors, 65; opposes an executive council, 81; favors negative by executive on legislature, 82, 84; favors creation of inferior judiciary, 87, 98; favors inclusion of judiciary in power of negative, 89; opposes appointment of judges by legislature, 90; favors ratification by plurality of States, 96; favors election of Representatives by the people, 100; favors preservation of state governments for local purposes, 107; favors inclusion of judiciary in revisionary power, 108, iv., 21, 30; favors election to Senate by districts, iii., 117; favors absolute negative in legislature, 124;

Wilson (*Cont'd*).
favors proportional representation, 134, 137, 308; favors representation by free inhabitants, 143; thinks voting in Senate should be on same plan as in House, 144; opposes Jersey plan, 175; opposes Hamilton plan, 220; insists that states are dependent on each other, 224; favors two branches of legislature, 237; thinks state governments may incroach on national government, 240; favors one-year term for Representatives, 248; favors national compensation of Representatives, 252; moves that compensation be fixed by legislature, 253; opposes age limit for Representatives, 255; opposes ineligibility of Representatives to other offices, 256, 262; opposes elections to Senate by state legislatures, 278; favors six years' term for Senators, 284; favors nine years' term for Senators, 291; opposes eligibility of Senators to state offices, 295; opposes sending for New Hampshire delegates, 326; opposes representation by states in Senate, 326; admits question of number of Senators is embarrassing, 335; opposes committee on representation in Senate, 349; moves question of voting in Senate, 369; opposes originating money bills in House, 370, 374; opposes yielding equal vote in Senate to small states, 376; thinks representation of western states should be based on property, 383; thinks wealth an impracticable rule of representation, 401; opposes inclusion of three-fifths of blacks as basis of representation, 407; favors guaranty of republican government to the states, 409; moves that representation be according to direct taxation, 414; favors representation based on free inhabitants and three-fifths of slaves, 414; favors adjusting taxation to representation, 419; thinks equal vote in Senate favored by minority, 426; insists that numbers are correct basis for representation, 426; thinks small states would abandon plea of equality in taxes and troops, 427; thinks originating money bills in House of little consequence, 427; insists on proportional representation in Senate, 434; favors non-interference of national government with state police, 446; opposes election of executive by the people, 451; opposes election of executive by legislature, 453; favors appointment of judges by executive, 461; favors continuance of old Congress till new government starts, 469; favors guaranty to states of republican government and against violence, 471; favors impeachability of executive, iv., 13; thinks departments should act separately, 29; thinks oath of allegiance unnecessary, 36; opposes election of executive by legislature, 52; suggests election of executive by members of national legislature selected by lot, 54, 57; on committee to report constitution according to resolutions, 58; favors specifying general principles for executive, 68; opposes disqualification from legislature of persons having unsettled accounts, 78; thinks time of meeting of legislature should be fixed, 113; favors winter as time for meeting of legislature, 115; thinks suffrage in the States should not be prescribed by legislature, 116; favors requiring Representatives to be inhabitants, 130; opposes requirement of seven years' inhabitancy for Representatives, 130, 131; thinks question of representation by free inhabitants premature, 138; opposed to origina-

Wilson (*Cont'd*).
ting money bills in House, 139; reviews question of citizenship of Representatives, 140; objects to vacancies in Senate being filled by state executives, 140; thinks provision as to money bills of no value to large states, 143, 145; opposes fourteen years' residence as necessary for Senators, 148; moves to reconsider requirement of seven years for Representatives, 159; thinks number for quorum should not be small, 162; thinks publication of legislative journal necessary, 167; moves four years' citizenship for Representatives, 172; insists Representatives need not be natives, 175; thinks new government bound by Pennsylvania's promises to foreigners, 178; moves seven years' citizenship for Senators, 179; thinks people will disapprove members of legislature holding other offices, 198; thinks good men will refuse legislature if debarred from other offices, 200; seconds motion to have acts revised by executive and judiciary, 208; thinks legislature will swallow up powers of government, 212; favors making three-fourths of legislature necessary to overcome executive negative, 213; explains difference between "duties" and "imposts," 214; thinks exports may be taxed, 217; opposed to power to emit bills of credit, 221; thinks it unnecessary to define felonies, etc., 224; thinks law of felonies, etc., ought to be declared, 234; moves that treason be against United States, 248; thinks treason may be against a state, 250; thinks proof of treason may be difficult, 250; favors power to tax exports, 261; seconds motion to tax exports by two-thirds of legislature, 263; thinks slaves should be taxed, 269; favors commitment of question of navigation acts, 273; thinks prohibition of *ex post facto* laws unnecessary, 276; thinks Senate should not make appointments, 285; thinks negative of state laws unnecessary, 287; objects to Senate's power to make treaties, 290; thinks judiciary may decide controversies between states, 293; seconds motion for election of executive by the people, 294; thinks larger states should have larger share in election of executive, 295; thinks Senate should not have separate voice in election of executive, 298; thinks state legislatures will order federal offices filled by state appointment if permitted, 299; thinks pardon before conviction may be necessary, 309; opposes removability of judges on application of legislature, 312; explains appellate power of judiciary, 315; doubts if suspension of right of habeas corpus is ever necessary, 317; moves legislature be prohibited from paying debts in anything but coin, 318; thinks states should not interfere with contracts, 319; objects to treating fugitive slaves as criminals, 323; favors interstate validity of state acts, 324; on committee to consider subject, 325; favors commercial regulations by majority vote, 329; thinks majority may regulate formation of new states, 335; thinks new states may be formed without consent of old, 337; opposes motion to guarantee public lands, 340; proposes ratification by seven states, 344; prefers ratification by eight states to nine, 345; thinks constitution binding only on ratifying states, 345; moves that ratification be by majority of people and states, 349; thinks state power over other states' acts not unusual, 356; opposes ineligibility of mem-

Wilson (*Cont'd*).
bers of legislature to other offices, 359; approves plan of electing executive, 367; thinks it unnecessary to give each House power over privileges of its members, 369; moves eventual election of President by whole legislature, 375; thinks eventual election of President by Senate dangerous, 380; moves to include House of Representatives in treaty-making power, 397; objects to Senate's participation in appointments, 398; objects to participation of two-thirds Senate on treaties, 400, 405; favors executive council, 402; favors ratification of treaties with majority of Senate, 404; thinks less than two-thirds Senate may ratify treaties of peace, 404; opposed to President convening either house of legislature, 410; moves amendments be with consent of two-thirds of states, 414; substitutes three-fourths, 414; opposes reconsideration of ratification clause, 417; thinks old Congress need not sanction constitution, 418; moves to strike out "direct taxes," 446; thinks legislature should not define offences against law of nations, 451; seconds motion in favor of canals, 452, 453; favors national university, 454; thinks accounts should be published from time to time, 457; thinks executive may pardon for treason, 464; favors depositing convention journal with president, 482.

Wythe, George, Va., attends convention, iii., 2; appointed on committee on rules, 5; submits report of committee on rules, 6; Pierce's sketch of, 6, n.; offers additional rules, 10, 13.

Y

Yates, Robert, N. Y., attends convention, iii., 1; Pierce's sketch of, 1, n.; on committee on compromise on representation, 350; leaves convention, 356, n.

Yeas and nays. *See* Legislature, national.

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